

ROMIL T. OLAYBAL, PETITIONER, VS. OSG SHIPMANAGEMENT MANILA, INC. AND OSG SHIPMANAGEMENT [UK] LTD., RESPONDENTS.

G.R. No. 211872. June 22, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

This petition for review on certiorari[1] under Rule 45 of the Rules of Court challenges the July 31, 2013 Decision[2] and the March 24, 2014 Amended Decision[3] of the Court of Appeals (CA), in CA-G.R. SP No. 128868, a case involving a claim for disability benefits filed by petitioner Romil T. Olaybal (Olaybal) against respondent OSG Shipmanagement (UK), Ltd., through its local manning agent OSG Shipmanagement Manila, Inc. (OSG).

The Facts:

Petitioner Olaybal was hired as an "Oiler" by OSG under various contracts from August 18, 2002 to October 1, 2010. Under his latest contract covering the period from June 7, 2010 to October 1, 2010, he was assigned to Overseas Sakura. The said vessel was covered by a collective bargaining agreement (CBA) between Olaybal and the Associate Marine Officers and Seamen's Union of the Philippines (AMOSUP) providing better benefits to Filipino shipboard personnel. As part of the pre-departure requirements, Olaybal submitted himself to the Pre-Employment Medical Examination (PEME) and was given a "Fit to Work" status. On June 8, 2010, Olaybal left Manila and embarked on the vessel in Qingdao, China.[4]

In July 2010, while the vessel was travelling from West Africa to Singapore, the ship's fresh water generator malfunctioned so the Chief Engineer asked Olaybal and the 3[rd] Asst. Engineer to make the necessary repairs. According to Olaybal, the 3[rd] Asst. Engineer ordered him to spray SAF acid in order to remove the tartar in the tubes. While doing so, some of the acid penetrated his eyes causing irritation and itchiness. The discomfort he felt continued until their vessel arrived in Singapore.

On September 8, 2010, while the vessel was in Singapore for bunkering, Olaybal experienced blurring of his right eye vision, but he ignored it and continued to perform his duties.[5]

On September 18, 2010, while the vessel was in Qingdao, China, Olaybal informed the Chief Engineer of the blurring vision of his right eye. He was advised to report his condition to the Captain. Due to the vessel's short stay in Qingdao, the Captain assured him that he would receive medical attention at the next port in Tianjin, China. When the vessel arrived in Tianjin, China, he was issued a medical referral report to their shore doctor, who diagnosed him to be suffering from (1) Retinal Detachment of Right eye and (2) Cataract, and recommended his immediate disembarkation to undergo operation as soon as possible and to avoid working.[6]

Considering that an exit visa was not secured for Olaybal from the Chinese authorities, he remained on the vessel. On October 1, 2010, while the vessel was docked in Singapore, he was brought to Citymed and Health Associates

Pte Ltd. which, in turn, referred him to Total Eye Care. In a medical report, dated October 1, 2010, the attending physician diagnosed him to be suffering from [1] (R) Eye-2 Areas of Retinal Detachment; [2] (L) Eye-Extensive Lattice Degeneration of Retina with Impending Detachment necessitating Barrier Laser Treatment. He stayed in the ward for a 24-hour observation period before he was transferred to the hotel to rest.

Finally, on October 7, 2010, Olaybal was repatriated from Singapore. The following day, October 8, 2010, he reported to OSG where he was referred to the Marine Medical Services (MMS) for medical treatment.

MMS referred Olaybal to its accredited eye specialists who required him to report thrice a month for check-up, but his visual impairment persisted. In going to the doctor's clinic in Metro Manila for the check-up, Olaybal paid for his taxi fare from his place in Imus, Cavite, and back, which amounted to P5,000.00.

In a medical certificate, dated January 12, 2011, the company-designated physician opined that the treatment for Olaybal would exceed 120 days and the recovery would depend on his response to the treatment. He issued the interim assessment of Grade 7-total loss of vision of one eye.[7]

On February 8, 2011, Olaybal underwent a surgical procedure, Par Plana Vitrectomy, for his right eye.[8]

On March 10, 2011, Olaybal was issued a medical certificate by MMS' Assistant Medical Coordinator, Dr. Esther Go, indicating that he had undergone medical/surgical evaluation treatment for Cataract, Right Eye; Retinal Detachment, Right Eye; Lattice Degeneration, Left Eye; S/P Scheral Buckling, Right Eye and Indirect Laser Treatment, Left Eye; Vitreous Strands, Right Eye; S/P Pars Plana Vitrectomy, Right Eye.[9]

On March 17, 2011, Olaybal consulted Dr. Mario D. Reyes (Dr. Reyes) of the Ospital ng Maynila Medical Center.[10] After examination, Dr. Reyes concluded that his right eye vision was compatible "to a permanent loss of useful visual acuity." [11]

Thus, on March 24, 2011, Olaybal filed a claim for permanent disability benefits under the CBA, reimbursement of transportation expenses, moral and exemplary damages and attorney's fees.

On January 3, 2012, the Labor Arbiter (LA) rendered judgment in favor of Olaybal.[12] The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered finding Complainant entitled to his full disability benefits and reimbursement of transportation fare and, correspondingly, holding all the Respondents jointly and severally liable to pay Complainant US\$89,100, or its peso equivalent at the time of payment, and P5,000.00, plus moral and exemplary damages of P100,000.00 each and attorney's fees equal to 10% of the judgment award.

SO ORDERED.[13]

On appeal, the National Labor Relations Commission (NLRC) affirmed the decision of the LA, but deleted the award of reimbursement of transportation fare.[14]

Aggrieved, the respondents elevated the case to the CA. On July 31, 2013, the CA affirmed the decision of the NLRC, but deleted the award of moral and exemplary damages and attorney's fees. The decretal portion reads:

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The assailed decision and resolution of the NLRC are hereby AFFIRMED with the MODIFICATION that the award of moral and exemplary damages as well as attorney's fees are DELETED.[15]

Respondents filed a motion for reconsideration, while Olaybal filed a motion for partial reconsideration which were both granted in part.

In its Amended Decision, dated March 24, 2014, the CA reversed and set aside its earlier decision, dated July 31, 2013, and a new one was entered. Thus, the dispositive portion of the Amended Decision reads:

WHEREFORE, premises considered, the Motion for Reconsideration filed by petitioners and the Motion for Partial Reconsideration filed by respondent Romil T. Olaybal are GRANTED IN PART. The Decision of this Court dated July 31, 2013 is REVERSED and SET ASIDE and a new one is entered finding petitioners OSG Shipmanagement Manila, Inc. and OSG Shipmanagement (UK) Ltd. Jointly and severally liable to pay respondent Romil T. Olaybal the reduced amount of US\$37,244.00 as partial and permanent disability benefit with Grade 7 Impediment as well as US\$1,000.00 by way of attorney's fees. The deletion of the award of moral and exemplary damages are hereby AFFIRMED.

SO ORDERED.[16]

The CA elucidated on the adjustment of the disability benefit. Thus:

Under Section 32 (subheading "Eyes") of the POEA-SEC, loss of one eye or total blindness of one eye merits a Grade 7 disability grading, which is equivalent to 41.80% disability assessment. In such case, the assessed seafarer is awarded US\$20,900.00 (US\$50,000.00 x 41.80%). The same section also provides that a disability rating of Grade 1, which constitutes total and permanent disability, entitles the seafarer to US\$60,000.00 (US\$50,000.00 x 120%).

On the other, under Section 20.1.4 of the parties' CBA, it is stipulated that [a] seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e., xxx US\$89,100.00 for ratings effective January 1, 2008. Furthermore, any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation. Moreover, Section 20.1.3.4 thereof states:

The applicable disability compensation shall be in accordance with the Impediment Grade and rate of compensation indicated in the table hereunder, to wit:

Disability Compensation Effective 01 January 2008

Impediment

Ratings

Junior Officers

Senior Officers

Grade

\$

\$

\$

1

89,100

118,800

148,500

x x x

7

37,244

49,658

62,073

x x x

Hence, it is only just and fair that respondent be awarded only the equivalent of a Grade 7 disability rating for loss of vision of one eye as assessed by Dr. Esther G. Go and Dr. Rober D. Lim, the company-designated physicians, x x x[17]

The CA noted that the company-designated physicians issued an interim assessment of Grade 7 disability to Olaybal on January 12, 2011 or before the lapse of the 120-day period, which began from his medical repatriation on October 6, 2010. During this period, Olaybal was under the state of temporary total disability. Conversely, the period granted to the company-designated physician to make the declaration of the fitness to work or determination of permanent disability of the seafarer may be extended, but not to exceed 240 days. In this case, however, Olaybal instituted a claim for total permanent disability compensation on March 24, 2011 or before the lapse of the 240-day period. Hence, it was premature for him to invoke the respondents' liability for total permanent disability as he pursued his claim without complying with the procedure laid out by then Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) and the CBA.[18]

Hence, this petition.

GROUND

- [The CA] gravely erred in giving full weight to the company-designated physician that petitioner is only suffering from Impediment Grade 7 under the POEA-SEC Schedule of Disability Allowance despite the Labor Arbiter finding as affirmed by NLRC that Petitioner is suffering from permanent total disability entitled to full disability benefits under the Amosup CBA
- [The CA] gravely erred in deleting the award for moral and exemplary damages and reducing the award for attorney's fees to US\$1,000.00 despite the findings of the Labor Arbiter as affirmed by NLRC that Petitioner is entitled to P100,000.00 each as moral and exemplary damages and ten Percent (10%) of the total award as attorney's fees.[19]

The petition is bereft of merit.

Preliminarily, it must be emphasized that this Court is not a trier of facts, hence, only questions of law, not questions of fact, may be raised in a petition for review on certiorari under Rule 45.[20] The findings of fact of the CA are conclusive and binding on this Court in the exercise of its power of review, as it is not its function to analyze or weigh the evidence all over again. It is a recognized exception, however, that when the CA findings are contrary to those of the NLRC and the LA, as in this case, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[21]

Olaybal contends that his "disability consisting of loss of vision of one eye is already permanent and total otherwise the company-designated physician could have not issued the degree of disability of Grade 7 which under the POEA-SEC amounts to 'total loss of One Eye or total blindness of one eye.' Having issued an assessment of degree of disability to Olaybal, there is no more need to wait for the expiration of the 240-day

period to render the disability permanent and final." [22]

Olaybal's contention is misplaced. Although Article 192(c)(1), Chapter VI, Title II, Book IV of the Labor Code, as amended, states that a disability which lasts continuously for more than 120 days is deemed total and permanent, the law makes a qualification, thus:

ART. 192. Permanent and total disability, x 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[.]

[Emphasis supplied]

Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, likewise provides:

SECTION 2. Disability, x x x

(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. [Italics Supplied]

The provision alluded to is Section 2, Rule X of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, which states:

SECTION 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 any time 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. [Italics Supplied]

In *Vergara v. Hammonia Maritime Services, Inc.*, [23] the Court harmonized the POEA-SEC with the Labor Code and the Amended Rules on Employee Compensation (AREC) holding that: (a) the 120 days provided in Section 20-B(3) [24] of the POEA SEC is the period given to the employer to determine the fitness of the seafarer to work, during which the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended by a maximum of 120 days, or up to 240 days, should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 days or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties. [25]

Likewise in the subsequent case of *C.F. Sharp Crew Management, Inc. v. Taok*, [26] the Court specified the instances when a seafarer may be allowed to initiate an action for total and permanent disability benefits, to wit: (a) 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 is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification issued by the company designated physician; (c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his

physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors whom he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.

It is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment.[27] Indeed, the seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC but this is on the presumption that the company-designated physician had already issued a final certification as to his fitness or disability and he disagreed with it.

In this case, there was still no such definitive finding. In fact, the company-designated physician clearly stated that Olaybal's medical treatment would exceed 120 days as his recovery would depend on his response to further treatments.[28] It would appear that he was still under observation as part of his post-pars plana vitrectomy procedure. He was even supposed to undergo Optical Coherence Tomography of Macula on his right eye coupled with further evaluation.[29] All these medical assessments indicate that his medical treatment was still ongoing.

It is not enough that the seafarer was unable to perform his job and is undergoing medical treatment for more than 120 days to automatically entitle him to total and permanent disability compensation. The rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240-day period, declares it to be so, or when after the lapse of the said period, he fails to make such a declaration.[30] In this case, Olaybal did not go to his scheduled doctor's appointment which was still within the 240-day period allowed for the company-designated physician to evaluate his condition. Instead, he got another doctor's opinion and filed the case. This is not the proper procedure for claiming total and permanent disability benefits. If the findings of his personal doctor were contrary to that of the company-designated physician, the proper procedure would have been to submit himself to an examination of a third doctor, agreed upon by him and the OSG, whose opinion shall be final and binding to both parties.

From the foregoing, it is evident that Olaybal cannot be said to have acquired a cause of action for total and permanent disability benefits.[31] At best, he is only qualified to claim partial permanent disability benefits equivalent to Grade 7 disability assessment as reflected in the company-designated physician's last medical progress report.

Besides, Section 30 of the POEA-SEC under the category "Eyes," provides that only total and permanent loss of vision of both eyes can be considered as Grade 1 disability, which is not applicable in the case of Olaybal. Olaybal cannot seek full disability compensation either on the basis of Article 20.1.4[32] of the AMOSUP CBA because he had no certification from the company-designated doctor that he was already permanently unfit for further sea service in any capacity.

With respect to the claim for moral and exemplary damages, the Court agrees with the CA that the same cannot be granted, there being no concrete showing of bad faith or malice on the part of the respondents. The records show

that the respondents shouldered all the expenses incurred in Olaybal's medical treatment.

The Court also agrees with the CA in its Amended Decision to reinstate the award of attorney's fees. Olaybal is indeed entitled to attorney's fees pursuant to Article 2208(8) of the Civil Code which states that the award of attorney's fees is justified in actions for indemnity under workmen's compensation and employer's liability law.[33] In *Iloreta v. Philippine Transmarine Carriers, Inc.*, [34] the Court found the amount of US\$1,000.00 as reasonable award of attorney's fees.[35]

WHEREFORE, the petition is DENIED. The March 24, 2014 Amended Decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Carpio (Chairperson), Del Castillo, Perez,[*] and Jardeleza,** JJ., concur.

[*] Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 2067, dated June 22, 2015.

** Designated Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 2056, dated June 10, 2015.

[1] Rollo, pp. 10-29.

[2] Id. at 31-48. Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justice Hakim S. Abdulwahid and Associate Justice Edwin D. Sorongon concurring.

[3] Id. at 49-58. Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justice Hakim S. Abdulwahid and Associate Justice Edwin D. Sorongon concurring.

[4] Id. at 32.

[5] Id. at 33.

[6] Id.

[7] Id. at 22-24.

[8] CA rollo, pp. 183; 185.

[9] Id. at 222.

[10] Id. at 223.

[11] Rollo, p. 24.

[12] CA rollo, pp. 57-72.

[13] Id. at 71-72.

[14] Id. at 48-56.

[15] Rollo, p. 47.

[16] Id. at 57.

[17] Id. at 51-52.

[18] Id. at 54.

[19] Id. at 18.

[20] Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[21] *Dimagan v. Dacworks United, Incorporated*, 671 Phil. 472, 480 (2011).

[22] *Rollo*, p. 24.

[23] 588 Phil. 895 (2008).

[24] Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

[25] *Vergara v. Hammonia Maritime Services, Inc.*, supra note 23, at 912-913.

[26] G.R. No. 193679, July 18, 2012, 677 SCRA 296, 314-315.

[27] *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56, 65-66 (2011); *German Marine Agencies, Inc. v. National Labor Relations Commission*, 403 Phil. 572, 588 (2001).

[28] *Rollo*, p. 23.

[29] Id. at 89; *CA rollo*, p. 189.

[30] *Santiago v. Pacbasin Ship Management, Inc.*, GR. No. 194677, April 18, 2012, 670 SCRA 271, 281-282.

[31] *C.F. Sharp Crew Management, Inc. v. Taok*, supra note 26, at 314-315.

[32] 20.1.4-Permanent Medical Unfitness

A Seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e. US\$148,500.00 for senior officers, US\$118,800.00 for junior officers and US\$89,100.00 for ratings (effective January 1, 2008). Furthermore, any seafarer assessed at less than 50% disability in the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation.

[33] *Leonis Navigation Co. Inc. v. Villamater*, 628 Phil. 81, 100 (2010).

[34] 622 Phil. 832, (2009).

[35] Id. at 843.

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