

OSG SHIP MANAGEMENT MANILA, INC., OSG SHIP MANAGEMENT (UK) LTD., AND/OR JOSEPHINE M. AQUINO, PETITIONERS, VS. ARIS WENDEL R. MONJE, RESPONDENT.*G.R. No. 214059. October 11, 2017*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-214059/>**REYES, JR., J:**

While the Court commiserates with the plight of the Filipino work force who continuously braves the rigors of overseas work, the Court could not blindly rule in their favor absent any evidence that would warrant the imposition of liability on the employer. The favor granted upon labor must not be abused, and the Court will not hesitate to deviate from the general rule if only to prevent these kinds of excesses.

The Case

Challenged before this Court via this Petition for Review on Certiorari under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA G.R. SP No. 131100 dated April 8, 2014, which reversed and set aside the Decision[2] and Resolution[3] dated March 21, 2013 and May 20, 2013, respectively, of the National Labor Relations Commission (NLRC). Likewise challenged is the subsequent Resolution[4] of the CA promulgated on August 27, 2014, which upheld the earlier Decision.

The Antecedent Facts

As borne by the records, the following are the undisputed facts:

Aris Wendel R. Monje (respondent), is a Filipino seafarer, who signed a Contract of Employment[5] with petitioner OSG Ship Management (UK) Ltd. (OSG UK), through its manning agent in the Philippines, OSG Ship Management Manila, Inc. (OSG Manila). He was accepted as an Ordinary-Seaman for eight (8) months, with a 40-hour work week, a basic monthly salary of USD437.00, and an allowance of USD210.00, in addition to overtime pay and vacation leave with pay.[6]

On February 11, 2011, the respondent boarded the vessel "Overseas Sifnos." Sometime in June of the same year, and while on board the vessel, the respondent complained of severe pain on his left knee, which prompted him to seek medical consult in the United States of America on June 23, 2011. He was repatriated back to the Philippines two (2) days later for further treatment. Upon his arrival, OSG Manila referred the respondent for medical treatment. On June 28, 2011, Dr. Raymund Jay Sugay (Dr. Sugay) of the Physician's Diagnostic Services Center, Inc. issued a medical evaluation certificate, indicating therein a working diagnosis of "left knee pain, etiology unknown." [7] This was followed by another medical evaluation certificate dated August 1, 2011, this time with a working diagnosis of "Lytic expansile lesion, proximal tibia, left knee etiology unknown, tatus post surgical open biopsy" [8] Per Dr. Sugay's September 9, 2011 medical report, the respondent underwent surgery on September 6, 2011. [9] Eventually, on April 17, 2012, Dr. Sugay had the following final diagnosis:

Giant cell tumor, proximal tibia, left knee; Status post surgical open biopsy (07/28/2011); Status post total knee replacement with tibial reconstruction and resection of tumor, left tibia (09/06/2011). [10]

Also included in this report was Dr. Sugay's opinion that the respondent's illness was not work-related. He said:

Giant cell tumors are benign growths in the bone characterized by the presence of multinucleated giant cells. As of the present time, the exact cause of Giant cell tumors is still unknown.

In our opinion, we may consider Mr. Monje's condition as not work-related.[11]

On January 5, 2012, the respondent filed the complaint before the Labor Arbiter seeking the payment of total and permanent disability benefits, damages and attorney's fees. In support thereof, he submitted a Medical Certificate dated April 27, 2012 issued by an independent physician, Dr. Misael Jonathan Ticman (Dr. Ticman), finding that the former's illness rendered him permanently disabled and unfit to work as a seaman in any capacity.[12]

The Decision of the Labor Arbiter

On August 27, 2012, the Labor Arbiter issued a Decision in favor of herein respondent, the dispositive portion of which stated that:

WHEREFORE, premises considered, judgment is hereby rendered finding respondents [herein petitioners] jointly and solidarity liable to pay: (a) permanent total disability benefits the amount of US\$125,000.00 under the CBA at its peso equivalent at the time of payment; (b) attorney's fees often percent (10%) of the total monetary award at its peso equivalent at the time of payment.

SO ORDERED.[13]

The Decision of the NLRC

Herein petitioners appealed the decision of the Labor Arbiter to the NLRC, which found the case in their favor and subsequently reversed the Labor Arbiter ruling. The dispositive portion of the NLRC decision states:

WHEREFORE, the Appeal is GRANTED and the Decision of the Labor Arbiter dated 27 August 2012 is SET ASIDE and a new one entered into DISMISSING the instant case for lack of merit.

SO ORDERED.[14]

The Decision of the Court of Appeals

Aggrieved, the respondent appealed the case to the CA. Once more, the decision was reversed. The NLRC decision was set aside and the Decision of the Labor Arbiter was reinstated. The fallo of the CA decision reads:

WHEREFORE, the foregoing considered, the present petition is hereby GRANTED and the assailed Decision dated 21 March 2013 and Resolution dated 20 May 2013 REVERSED and SET ASIDE. The Labor Arbiter Decision dated 27 August 2012, insofar as it declared petitioner's disability as permanent and total and the grant of petitioner's monetary award are concerned, is REINSTATED.

SO ORDERED.[15]

Thereafter, herein petitioners' motion for reconsideration was denied.[16] Hence, this petition for review on certiorari.

The Issues

Petitioners anchor their plea for the reversal of the assailed Decision on the following arguments:

- THE COMPANY DOCTOR'S OPINION ON THE NON-WORK RELATION OF SEAFARER'S ILLNESS WAS NOT REBUTTED BY THE PERSONAL DOCTOR OF SEAFARER. IN FACT, THE PERSONAL DOCTOR OF SEAFARER EVEN MENTIONED THAT THE ILLNESS WAS ACQUIRED AFTER THE

LATTER PLAYED BASKETBALL. IN THE MAGSAYSAY V. CEDOL CASE, THE SUPREME COURT HELD THAT IF THE SEAFARER'S PERSONAL DOCTOR DID NOT CONTRADICT THE COMPANY'S DOCTOR (SIC) OPINION THAT THE ILLNESS IS NOT WORK-RELATED THE LATTER'S OPINION IS CONCLUSIVE.

- THE PRESUMPTION OF WORK-RELATION IN THE POEA CONTRACT IS NOT AN IRON-CLAD RULE. IN FACT, IN RECENT JURISPRUDENCE, THE SUPREME COURT HELD THAT THE SEAFARER HAD THE BURDEN TO PROVE THE WORK-RELATION OF HIS ILLNESS. IT NOW SEEMS THAT THE FACT THAT SEAFARER WAS CONTINUOUSLY REHIRED OR THE FACT THAT HIS WORK ON BOARD IS STRESSFUL IS NOT SUFFICIENT TO SUPPORT A CONCLUSION THAT THE ILLNESS IS WORK-RELATED.

- THE CBA INVOKED BY SEAFARER APPLIES TO ACCIDENTS ONLY AND NOT TO ILLNESSES LIKE THE CANCER THAT SEAFARER SUFFERED.

- THE AWARD OF 10% ATTORNEY'S FEES IS ERRONEOUS.[17]

After a reading of the foregoing, the issues presented before the Court could be summarized into the following: (1) whether or not the illness suffered by the respondent is work-related; (2) whether or not the Collective Bargaining Agreement between the parties is applicable in this case; and (3) whether or not attorney's fees are properly awarded.

The Court's Ruling

As a general rule, only questions of law raised via a petition for review on certiorari under Rule 45 of the Rules of Court are reviewable by the Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[18]

However, a relaxation of this rule is made permissible by the Court whenever any of the following circumstances is present:

- 1.)
when the findings are grounded entirely on speculations, surmises or conjectures;
- 2.)
when the inference made is manifestly mistaken, absurd or impossible;
- 3.)
when there is grave abuse of discretion;
- 4.)
when the judgment is based on a misapprehension of facts;
- 5.)
when the findings of fact are conflicting;
- 6.)
when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are

contrary to the admissions of both the appellant and the appellee;

7.)

when the findings are contrary to that of the trial court;

8.)

when the findings are conclusions without citation of specific evidence on which they are based;

9.)

when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;

10.)

when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;

11.)

when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

12.)

when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[19]

The first issue raised by herein petitioners, whether or not the illness sustained by the respondent is work-related, is essentially a factual issue, and therefore, not generally within the scope of review by the Court. However, considering that the NLRC and the CA have conflicting findings of facts, and in light of circumstance no. 5 quoted above, the Court can and will be justified in delving into the question of fact now presented.

Time and again, the Court has ruled that the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) is the law between the parties and, as such, its provisions bind both of them.[20] In a long line of cases, the Court has oft-repeated that for an illness or injury to be compensable, Section 20(B) of the 2000 POEA-SEC, now Section 20(A) of the 2010 POEA-SEC, requires that two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[21]

According to the POEA-SEC, a work-related injury[22] are those "injury(ies) resulting in disability or death arising out of and in the course of employment" and a work-related illness[23] is "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." [24] For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related.[25]

In applying the foregoing pronouncements in this case, therefore, and considering that the diagnosis of the respondent's illness, "Giant cell tumor, proximal tibia, left knee," is not among those listed in Section 32 of the POEA-SEC, the main query is whether or not the petitioners have presented evidence sufficient to overcome the disputable presumption provided for by the POEA-SEC that the same is work-related.

In the pleadings submitted, the petitioners presented the letter of Dr. Sugay, the company designated physician, who opined that the respondent's condition is not work-related. To reiterate, Dr. Sugay's opinion was worded thus:

Giant cell tumors are benign growths in the bone characterized by the presence of multinucleated giant cells. As of the present time, the exact cause of Giant cell tumors is unknown.

In our opinion, we may consider Mr. Monje's condition as not work-related.[26]

It must also be remembered that Dr. Sugay was the attending physician who provided the medical history of the respondent, and who conducted the medical examination of and provided the diagnosis for the respondent from the moment that the latter was repatriated back to the Philippines. In fact, the petitioners presented several medical examination certificates, dated June 28, 2011,[27] August 1, 2011,[28] and September 9, 2011[29]-all providing for the medical treatment accorded by the petitioners to the respondent.

The Court once again emphasizes that, according to the case of *Andrada v. Agemar Manning Agency, Inc.*,[30] jurisprudence is replete with pronouncements that 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. It is his findings and evaluations which should form the basis of the seafarer's disability claim.

This is so in the instant case.

On the other hand, the respondent presented the April 27, 2012 Disability Report issued by his personal physician, Dr. Ticman.[31] In the report, Dr. Ticman indicated: (1) the medical history of the respondent; (2) the results of the physical examination that was conducted on the respondent; (3) the diagnosis; and (4) the disability rating.[32]

It must be pointed out, however, that while the Medical Report stated the same diagnosis as the report of the company designated physician, "Giant Cell Tumor Proximal Tibia Status post total knee replacement using mega prosthesis," nowhere is there a refutation, or even a mention, of the relation of the illness to the work of the respondent.

In fact, it was only in the assertions of the respondent in his pleadings where it was stated that the illness is work-related. In his Comment dated January 28, 2015, the respondent said that:

29. As Ordinary Seaman, indeed Respondent's duties and responsibilities includes (sic) manual and hard labor, the same were strenuous and stressful as he is needed to stay at work for a long period of time everyday and even the early morning hours.

30. It bears stressing that illnesses sustained by Respondent supervened while Respondent was at the deck of the Ship performing his duties and Responsibilities (sic). It is to be noted that as a seaman. Respondent was invariably exposed to the pollutants, various chemicals and toxic materials on a constant basis and the hot and humid conditions of his work station, the very stressful demands of his duties and responsibilities, the rigors at sea and the stress and strain while being away from home and his family.

31. Moreover, the foods provided on board the vessels were mostly meat, high in fat and high in cholesterol and Respondent had no choice but to eat what is being serve (sic) on the mess hall and these consisted mainly of high-fat, high-cholesterol, and low-fiber foods.[33]

According to the case of *De Leon v. Maunlad Trans, Inc.*,[34] while the POEA-SEC creates a presumption that illnesses not mentioned in Section 32 thereof are disputably presumed to be work-related, still, the Court has held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions.

In *Cagatin v. Magsaysay Maritime Corporation*,[35] the Court ruled that substantial evidence is not one that

establishes certainty beyond reasonable doubt, but only such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. It is more than a mere scintilla of evidence.[36]

Further, De Leon[37] stated that, in order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient—direct causal relation is not required. Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.

To be sure, the assertions made by the respondent in his pleadings are neither backed by the expert testimony/affidavit of any competent physician, nor are they supported by any evidence or testimony other than the mere allegations of the respondent.

In paragraphs 29-31 of the respondent's Comment as cited above, the respondent enumerated the harsh conditions that a Filipino seafarer undoubtedly experiences during the course of his/her duty aboard an ocean-going vessel. He related that a seafarer's work was both stressful and strenuous, that a seafarer could be exposed to pollutants, various chemicals, and toxic materials on a constant basis, and that there is "stress and strain" while being away from home and his family. He even mentioned that a seafarer's diet consists mostly of meat, which is high in fat, high in cholesterol, and low in fiber.

But the Court must point out that the diagnosed illness of the respondent was "Giant cell tumor, proximal tibia, left knee." How the foregoing harsh conditions caused the illness, or even how they aggravated the same, was never explained. Indeed, it is as if the respondent merely enumerated the difficult conditions experienced by a seafarer, and just Left it to the Court to infer any connection that the conditions may have to the diagnosed illness. In fact, by the way that the respondent argued his case, it would appear that the same conditions could cause any and all conceivable illness that a seafarer may contract.

The respondent made a litany of factors that were attendant in his work as an ordinary seaman, but none proves any reasonable connection between the illness and the factors mentioned. It is not hard to conclude then that these are self-serving assertions that deserve scant consideration.

While the Court is wary of the principle that provisions of the POEA-SEC must be applied with liberality in favor of the seafarers, the Court has not hesitated in the past to deny a seafarer's disability claims when the same were anchored on flimsy grounds and unfounded allegations. According to Cagatin:[38]

"[c]laims for compensation based on surmises cannot be allowed; liberal construction is not a license to disregard the evidence on record or to misapply the laws. This Court abides by the principle that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence." [39]

In the case at hand, the Court finds that no substantial evidence of work relation has been proven to exist between the diagnosed illness and the respondent's work. As such, on the strength of Section 20(A) of the 2010 POEA-SEC, the petitioners herein could not be made liable.

Consequently, the other issues raised by the petitioners need not be discussed further.

WHEREFORE, premises considered, the petition for review is GRANTED. The Decision dated April 8, 2014 of the Court of Appeals in CA-G.R. SP No. 131100 is hereby REVERSED and SET ASIDE, and the Decision of the National Labor Relations Commission in NLRC-LAC(OFW-M) 10-000860-12 and NLRC Case No. NCR. (M) 01-00226-12 is REINSTATED.

SO ORDERED.

Carpio,(Chairperson), Peralta, Perlas-Bernabe, and Caguioa, JJ., concur.

[1] Penned by Associate Justice Danton Q. Bueser with Associate Justices Rebecca De Guia-Salvador and Ramon R. Garcia concurring; rollo, pp. 14-23.

[2] Id. at 101-109.

[3] Id. at 124-125.

[4] Id. at 67.

[5] Id. at 154.

[6] Id.

[7] Id. at 186.

[8] Id. at 187.

[9] Id. at 188.

[10] Id. at 194.

[11] Id.

[12] Id. at 96.

[13] Id. at 200.

[14] Id. at 42.

[15] Id. at 65.

[16] Id. at 67.

[17] Id. at 34-35.

[18] *Lamberto M. De Leon v. Maunlad Trans, Inc., Seachest Associates, et al.*, G.R. No. 215293, February 8, 2017.

[19] Id.

[20] *Jebsens Maritime, Inc., Sea Chefs Ltd. And Enrique M. Aboitiz v. Florvin G. Rapiz*, G.R. No. 218871, January 11, 2017.

[21] See *Nonay v. Bahia Shipping Services, Inc.*, G.R. No. 206758, February 17, 2016, 784 SCRA 292, 311-312; *Austria v. Crystal Shipping, Inc.*, G.R. No. 206256, February 24, 2016, 785 SCRA 89, 98.

[22] Par. 17, Definition of Terms, Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-going Ships, Philippine Overseas Employment Administration Memorandum Circular No. 10, s. 2010.

[23] Id. at Par. 16.

[24] *Nonay v. Bahia Shipping Services*, supra note 21 at 312; *Austria v. Crystal Shipping, Inc.*, supra note 21.

[25] Supra note 22, at Par. 4, Sec. 20(A).

[26] Rollo, p. 128.

[27] Id. at 120.

[28] Id. at 121.

[29] Id. at 122.

[30] 698 Phil. 170.

[31] Rollo, p. 96.

[32] Id.

[33] Id. at 415.

[34] Supra note 18.

[35] 761 Phil. 64, 80 (2015).

[36] Id.

[37] *Lamberto M. De Leon v. Maunlad Trans. Inc., Seachest Associates, et al.*, supra note 18.

[38] *Cagatin v. Magsaysay Maritime Corporation*, supra note 35.

[39] Id. at 89-90.

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