

**BENEDICTO O. BUENAVENTURA, JR., PETITIONER, V. CAREER
PHILIPPINES SHIPMANAGEMENT, INC., COLUMBIA
SHIPMANAGEMENT LTD., AND SAMPAGUITA D. MARAVE,
RESPONDENTS.**

G.R. No. 224127. August 15, 2018

Ponente: TIJAM, J.

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TIJAM, J.:

This is a petition for review on certiorari[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated December 18, 2015 and the Resolution[3] dated April 18, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138400 which reversed and set aside the Decision[4] dated July 22, 2014 of the Labor Arbiter (LA) in NLRC-NCR-OFW-Case No. (M) 02-01655-14 and the Decision[5] dated September 22, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC (OFW-M)-09-000722-14, which found that petitioner Benedicto O. Buenaventura, Jr. (Buenaventura) is entitled to total and permanent disability benefits under the Collective Bargaining Agreement (CBA).

Facts of the Case

On July 11, 2012, Buenaventura entered into a nine-month contract with respondent Columbia Shipmanagement Ltd. (Columbia), through its local agent, respondent Career Shipmanagement, Inc. (Career), as a laundryman. After he was declared fit for duty following a pre-employment medical examination, he went on board MV Columbus 2.[6]

On December 25, 2012, Buenaventura allegedly slipped and hit his left shoulder on the door of a washing machine. He alleged that he immediately reported his condition to the ship doctor. He was thus given medication. However, despite the same, Buenaventura continued to feel pain on his left shoulder.[7]

When MV Columbus 2 had a stopover in Manila, the ship doctor accompanied Buenaventura to St. Luke's Medical Center for laboratory tests. When the results came out, it was suspected that Buenaventura has a coronary artery disease. Thus, his repatriation was recommended.[8]

To determine the cause of his pain, Buenaventura was subjected to the care of company-designated doctors, and underwent a series of medical examinations and laboratory tests. The Magnetic Resonance Imaging study cleared him of serious heart ailments. However, the findings on his left shoulder are as follows:

IMPRESSION

Superior labral tear
Degenerative changes, superior glenoid rim
Mild supraspinatus tendinosis
Mild acromioclavicular joint hypertrophy[9]

To address the pain on his left shoulder, Buenaventura underwent a surgical operation called arthroscopic superior labral repair on March 18, 2013. He was placed on therapy from March 2013 to May 2013. During this period, he was paid his sickness allowance.[10]

On July 8, 2013, the company-designated physician issued a Final Report, stating:

This is a final report on [Benedicto Buenaventura] with a disability grading of 12 for the neck and grade 11 for the shoulder.[11]

After such report, Buenaventura consulted independent physicians who all issued Medical Certificates,[12] stating that Buenaventura is unfit to resume work as a seaman.

Respondents were unaware of such consultation and medical evaluation by an independent physician.[13]

In the meantime, Buenaventura continued to receive medical treatment from the company-designated physicians until August 2013.[14]

On February 14, 2014, Buenaventura filed a complaint for disability benefits and insisted that his condition was caused by an accident suffered while on board MV Columbus 2.[15]

For their part, respondents denied any liability under the CBA as Buenaventura's condition did not arise from an accident. Moreover, respondents averred that Buenaventura failed to comply with the rules set under the CBA and the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) relative to the matter disputing the assessment of the company-designated physicians.[16]

Ruling of the LA

In a Decision[17] dated July 22, 2014, the LA declared that Buenaventura is suffering from disability grading 1 or total and permanent disability. The LA gave credence to Buenaventura's claim that he suffered an accident on board when he slipped while in the performance of his duty. The dispositive portion of the Decision reads:

WHEREFORE, a Decision is hereby rendered ordering Respondents [Career] and [Columbia] to jointly and severally pay [Buenaventura] US\$125,000.00 as total and permanent disability Grade 1, plus 10% of the total award as and by way of attorney's fees in its peso equivalent at the time of payment.

SO ORDERED.[18] (Emphasis in the original)

Aggrieved, respondents appealed the Decision of the LA to the NLRC.

Ruling of the NLRC

In a Decision[19] dated September 22, 2014, the NLRC affirmed the ruling of the LA and denied respondents' appeal for lack of merit, thus:

WHEREFORE, the appeal of respondents is hereby DENIED for lack of merit.

The judgment on appeal is AFFIRMED IN TOTO.

SO ORDERED.[20]

Respondents' motion for reconsideration[21] was likewise denied in a Resolution[22] dated October 16, 2014.

The matter was elevated to the CA in a Petition for Certiorari[23] under Rule 65.

Ruling of the CA

The CA, in its Decision[24] dated December 18, 2015, granted the petition and set aside the ruling of the NLRC.

The CA ruled that Buenaventura failed to prove that his injury was caused by an accident as the pieces of evidence proving the same, e.g. the medical reports issued by the company-designated physicians, constitute hearsay evidence because the doctors cannot credibly testify regarding such occurrence.[25] Also, the CA maintained that Buenaventura did not follow the prescribed procedure of having conflicting assessments on his disability referred to a third doctor for a binding opinion before filing a complaint for disability benefits.[26] Moreover, the independent physician's assessment cannot prevail over the conclusions of the company-designated doctors as the former was consulted for one day only and merely relied on the same medical history and analysis provided by the latter.[27] The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the petition is GRANTED. The decision of the NLRC in NLRC LAC (OFW-M)-09-000722-14 (NLRC-NCR-OFW (M) 02-01655-14) is hereby SET ASIDE. Accordingly, the complaint before the [LA] is hereby DISMISSED.

SO ORDERED.[28] (Emphasis in the original)

Buenaventura's motion for reconsideration was denied in its Resolution[29] dated April 18, 2016.

Hence, this petition.

The Issue

Essentially, the issue in the present case is whether or not Buenaventura is entitled to total and permanent disability benefits.

Ruling of the Court

To recall, the LA and the NLRC ruled that Buenaventura suffered an accident in the performance of his duty. The labor tribunals maintained that as his injury was a result of an accident, the same is compensable under the terms of the CBA, to wit:

ITF CRUISE SHIP
MODEL AGREEMENT FOR
CATERING PERSONNEL
1998

x x x x

Article 10

Death and Disability Insurance:

x x x x 2. Disability

A Seafarer who suffers injury as a result of an accident from any cause whatsoever whilst in the employment of the Company, regardless of fault, including accidents occurring whilst traveling to or from the Ship and whose ability to work is reduced as a result thereof, shall in addition to his sick pay, be entitled to compensation according to the provisions of this Collective Agreement.[30]

However, the CA reversed and set aside the decision of both labor tribunals and held that Buenaventura failed to prove that an accident had indeed occurred. In ruling so, the CA altogether dismissed the complaint for disability benefits filed by Buenaventura.

We disagree with the CA in dismissing altogether the complaint for disability benefits filed by Buenaventura.

The fact of accident was not sufficiently proven as: (1) there was neither a report on the ship's logbook nor on the

Master's report regarding said incident; and (2) the factual findings of the LA, as adopted by the NLRC, on the fact of accident have no basis since the former merely drew a conclusion that an accident occurred just because a "superior labral tear x x x implies an abrupt impact on [Buenaventura's] left shoulder" which, to the words of the LA, is merely suggestive of an accident.[31] We rule that the foregoing do not imply that Buenaventura is not entitled to disability benefits just because the CBA does not apply in his case. Aside from the CBA, the POEA-SEC finds application, thus:

Deemed incorporated in every seafarer's employment contract, denominated as the POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions determined and implemented by the POEA, called the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels," which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[32] (Citation omitted)

In other words, "[t]he POEA-SEC and the CBA govern the employment relationship between [Buenaventura] and the [respondents]. The two instruments are the law between them. They are bound by their terms and conditions, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim." [33]

"For disability to be compensable under Section 20(B)(4) of the POEA-SEC, 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." [34]

The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." [35]

In the case of *Sy v. Philippine Transmarine Carriers, Inc., et al.*, [36] we had the occasion to explain work-related injury, to wit:

The two components of the coverage formula — "arising out of" and "in the course of employment" — are said to be separate tests which must be independently satisfied; however, it should not be forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, "work-connection," because an uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries. The words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident takes place.

As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto. [37] (Citation omitted and emphasis ours)

In this case, Buenaventura was a laundryman, whose tasks include:

- Keeps the laundry area and line/uniform rooms clean and tidy at all times.
- Maintain[s] laundry equipment in good working order.
- Reports any loss or damage of uniforms and fixtures and maintenance deficiencies.
- Issues uniforms to new and returning sign-on crew as needed.

- Receives, issues and records supplies according to company policy and procedures.
- Accounts for the exchange of soiled crew uniforms on a one-to-one basis.
- Accounts for the exchange of crew lines on a one-to-one basis.[38]

While in the course of his employment, he suffered a "superior labral tear" which is an injury to the glenoid labrum (fibrocartilaginous rim attached around the margin of the glenoid cavity)[39] on his left shoulder. It is undisputed that said injury took place within the period of his employment, i.e., five months and 14 days into the contract; at the place where he reasonably may be, i.e., at the laundry area; and while he is fulfilling his duty, i.e., climbing up and down the vessel's ladder to collect laundry and check on his equipment.[40] Said circumstances correspond to the definition of "arising out of and in the course of employment"; thus, Buenaventura's injury is work-related.

As his injury is deemed work-related, we now determine the corresponding disability benefits to which Buenaventura is entitled to.

The company-designated physician issued disability grading 11 for Buenaventura's shoulders and disability grading 12 for his neck.[41] On the other hand, the independent physicians declared him unfit for sea duty.

On this note, Section 20(A)(3)[42] of the POEA-SEC states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer and the latter's decision shall be final and binding on both parties. Hence, it is imperative that in case of conflicting assessments, the seafarer must submit to a third doctor, who should be mutually agreed upon by him and his employer. This procedure must be strictly followed otherwise, if not availed of or followed strictly by the seafarer, the assessment of the company-designated physician stands.[43]

In this case, Buenaventura failed to comply with such requirement. As it is, the assessment of the company-designated physician prevails.

Lastly, we delete the award of attorney's fees for there was no showing that respondents acted in gross and evident bad faith in refusing to satisfy [Buenaventura's] demands.[44]

WHEREFORE, premises considered, the petition is GRANTED. The Decision dated December 18, 2015 and the Resolution dated April 18, 2016 of the Court of Appeals in CA-G.R. SP No. 138400 are REVERSED and SET ASIDE. Accordingly, respondents Career Philippines Shipmanagement, Inc. and Columbia Shipmanagement Ltd. are hereby ORDERED to pay petitioner Benedicto O. Buenaventura, Jr. the amount of US\$7,465.00 corresponding to disability grading 11 and US\$5,225.00 corresponding to disability grading 12, both in its equivalent in Philippine currency at the time of payment.

SO ORDERED.

Peralta,[*] Del Castillo, Jardeleza, and Gesmundo,**] JJ., concur.

[*] Designated Acting Chairperson per Special Order No. 2582 (Revised) dated August 8, 2018.

[**] Designated Acting Member per Special Order No. 2560 (Revised) dated May 11, 2018.

[1] Rollo, pp. 35-76.

[2] Penned by Associate Justice Agnes Reyes-Carpio, concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of the Court) and Associate Justice Romeo F. Barza (now Presiding Justice); id. at 11-29.

[3] Id. at 31-32.

[4] Rendered by Labor Arbiter Lilia S. Savari; id. at 165-185.

[5] Penned by Presiding Commissioner Alex A. Lopez, concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.; id. at 148-164.

[6] Id. at 12.

[7] Id. at 266.

[8] Id. at 12.

[9] Id. at 12-13.

[10] Id. at 13.

[11] Id. at 258.

[12] Id. at 364-367, 368-371, 373-374.

[13] Id at 13-14.

[14] Id at 14.

[15] Id.

[16] Id at 15-16.

[17] Id. at 165-185.

[18] Id. at 185.

[19] Id. at 148-164.

[20] Id. at 163.

[21] Id. at 188-202.

[22] Id. at 186-187.

[23] Id. at 104-145.

[24] Id. at 11-29.

[25] Id. at 18-21.

[26] Id. at 22-26.

[27] Id. at 26-28.

[28] Id at 28.

[29] Id. at 101-102.

[30] Id. at 238-241.

[31] Id. at 183.

[32] *Racelis v. United Philippines Lines, Inc., et al.*, 746 Phil. 758, 766 (2014).

- [33] Phil. Hammonia Ship Agency, Inc., et al. v. Dumadag, 712 Phil. 507, 520 (2013).
- [34] Lamberto M. De Leon v. Maunlad Trans, Inc., Seacrest Associates, et al., G.R. No. 215293, February 8, 2017.
- [35] Id.
- [36] 703 Phil. 190 (2013).
- [37] Id. at 198-199, citing Iloilo Dock & Eng'g. Co. v. WCC, et al., 135 Phil. 95, 97-98 (1968).
- [38] Rollo, p. 166.
- [39] < https://www.physio-pedia.com/SLAP_Lesion > (visited August 8, 2018).
- [40] Rollo, p. 166.
- [41] Id. at 258.

[42] SEC. 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x

3. x x x

x x x x

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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by a seafarer. 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.

- [43] Calimlim v. Wallem Maritime Services, Inc., et al., 800 Phil. 830, 843 (2016).
- [44] Reynaldo Y. Sunit v. OSM Maritime Services, Inc., et al., G.R. No. 223035, February 27, 2017.

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