

EDILBERTO R. PALERACIO, PETITIONER, VS. SEALANES MARINE SERVICES, INC., SPLIETHOFF GROUP MANILA, INC. AND/OR CHRISTOPHER DINO C. DUMATOL AND CAPT. RUBEN AGMATA, RESPONDENTS.

G.R. No. 229153. July 09, 2018

Ponente: PERALTA, J.

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PERALTA, J.:

For the resolution of this Court is the petition for review on certiorari filed by herein petitioner Edilberto R. Paleracio (Paleracio) assailing the Decision[1] dated June 17, 2016 and the Resolution[2] dated November 22, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 135418, which annulled and set aside the Decision[3] and Resolution,[4] dated January 30, 2014 and February 28, 2014, respectively, of the National Labor Relations Commission (NRLC) in NLRC NCR CASE NO. 02-02169-13.

The facts follow.

On November 21, 2011, Sealanes Marine Service, Inc., for and on behalf of Spliethoff Beheer B.V. (respondents), hired Paleracio as Able Bodied Seaman for a period often (10) months with basic monthly salary of US\$575.00.

Paleracio was on duty on September 5, 2012 when the steel chain disengaged and hit his right arm. On September 25, 2012, he was brought to the hospital in Kotka, Finland and was referred to Dr. Teemu Partanen (Dr. Partanen). He was found to have contusion/bruise in his upper right arm. Dr. Partanen recommended that his right antebrachium be x-rayed.[5]

Subsequently, he arrived in Manila on September 27, 2012. He reported the pain in his right arm to the manning agency and was referred to Dr. Roehl Salvador and Dr. Jose Bautista (Dr. Bautista) of the Manila Doctors Hospital. He underwent hematology tests[6] and x-ray. His x-ray result reads:

RIGHT RADIUS/ULNA: 08 October 2012

A dynamic compression plate anchored by 7 screws is applied to the radial shaft, rendering good anatomic alignment of the fracture fragments therein.

The rest of the visualized osseous structures and joint spaces are intact.[7]

On October 8, 2012, Paleracio was diagnosed with a neglected radial shaft fracture on his right arm with impending malunion, and underwent a corrector osteotomy with radial plating on the same day. He was discharged the next day and underwent therapy under Dr. Bautista. On February 7, 2013, he consulted Dr. Misael Jonathan Ticman (Dr. Ticman), a private specialist, after the respondents allegedly discontinued his treatment after four months with no improvement. On February 8, 2013, he filed a complaint for total and permanent disability benefit, damages and attorney's fees against respondents. In the disability report[8] dated March 14, 2013, Dr. Ticman declared that he is unfit to work as a seaman in any capacity. A portion of the report reads:

Physical Examination

- conscious, coherent, ambulatory
- stable vital signs
- (+) surgical scar, right forearm
- (+) tenderness, right forearm on pronation-supination
- (+) difficulty in lifting heavy objects

Diagnosis

Fracture, Radial shaft, right, in impending malunion s/p ORIF, plating

DISABILITY RATING

Based on the history and physical examination on the patient, in spite of the Surgery, Physical therapy, and medications given, symptoms persist, the prognosis is not good. I am therefore recommending Permanent Disability and that he is unfit to work as a seaman in any capacity.

For their part, respondents denied liability for Paleracio's permanent total disability compensation. They alleged that he was repatriated due to a finished contract, and reported to them five days upon his arrival.[9] There was doubt that the pain was work-related since there was no accident report. Nevertheless, he was referred to the company-designated physicians, and was diagnosed with malunited radial shaft fracture. He filed the complaint for disability benefits while he was still under treatment. In the Medical Report[10] dated March 21, 2013, Dr. Bautista declared him fit to return to work, which reads:

21 March 2013

To: Dr. Roehl Salvador

Re: Edilberto Paleracio

Diagnosis: Malunited Radial Shaft Fracture, Right S/P Radial Plating (8 Oct., '12)

It's been 5 1/2 months since Mr. Paleracio's surgery.

He complains of occasional right forearm pain on lifting heavy objects.

He has full range of motion and normal strength of the extremity.

He is fit to return to work without restrictions.

In a Decision[11] dated October 17, 2013, the Labor Arbiter (LA) dismissed the complaint for lack of merit. The LA held that Paleracio failed to submit himself to a medical examination within three working days upon his return as provided by the Philippine Overseas Employment Administration Standard Employment Contract Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA-SEC). The March 14, 2013 Disability Report did not indicate the disability grading. Besides, the malunited radial shaft fracture is not a life-threatening injury and usually heals if given proper medication and treatment. Thus, the company-designated doctor's medical opinion was given more weight due to the extensive treatment given to him.

On appeal, the NLRC reversed the decision of the LA and awarded disability compensation in accordance with AMOSUP Collective Bargaining Agreement (CBA). It held that the findings favorable to the complainant must be adopted in case of conflict in the determination of fitness to work between the company-designated physician and the seafarer's physician. It also ruled that the disability should be understood less on its medical significance but more on the loss of earning capacity. Permanent disability means the inability of a worker to perform his job for more than 120 days. The dispositive portion of the decision reads:

WHEREFORE, the October 7, 2013 Decision of Labor Arbiter Gaudencio P. Demaisip, Jr. is hereby REVERSED and a new Decision is hereby rendered ordering respondents-appellees, jointly and severally, to pay complainant-appellant by way of permanent and total disability compensation the amount of US\$80,000.00, pursuant to the POEA Standard Contract in relation to the AMOSUP Collective Bargaining Agreement and attorney's fees of 10% of the total award.

SO ORDERED.[12]

In the June 17, 2016 Decision, the CA granted the petition for certiorari filed by respondents. The CA gave more probative weight to the company-designated doctor's assessment since Dr. Ticman's disability assessment was not supported by any diagnostic test and procedures, and was apparently based only on physical examination. The non-compliance with the conflict resolution provided by the POEA-SEC results in the affirmance of the fit-to-work certification of the company-designated physician. The fallo of the decision reads:

WHEREFORE, the instant petition is DISMISSED. The Decision dated January 30, 2014 and Resolution dated February 28, 2014 of the National Labor Relations Commission in LAC No. 01-000014-14 (OF2-[M]-02-02169-13), are hereby ANNULLED and SET ASIDE.

Private respondent's Complaint for permanent and total disability compensation is DISMISSED for lack of merit.

SO ORDERED.[13]

In a Resolution dated July 27, 2016, the CA amended the dispositive portion of the decision, to wit:

WHEREFORE, the instant petition is GRANTED. The Decision dated January 30, 2014 and Resolution dated February 28, 2014 of the National Labor Relations Commission in LAC No. 01-000014-14 (OF2-[M]-02-02169-13), are hereby ANNULLED and SET ASIDE.

Private respondent's Complaint for permanent and total disability compensation is DISMISSED for lack of merit.

SO ORDERED.[14]

Upon denial of his Motion for Reconsideration, Palaracio elevated the matters before this Court raising the issue:

THE CA COMMITTED GRAVE ERROR IN DENYING TO PETITIONER THE PERMANENT TOTAL DISABILITY BENEFITS ON THE FOLLOWING GROUNDS:

- THE PETITIONER FAILED TO SUBSTANTIATE HIS CLAIM FOR PERMANENT DISABILITY BENEFITS;
- THE PETITIONER FAILED TO AVAIL OF THE CONFLICT RESOLUTION PRIOR TO FILING THE COMPLAINT.[15]

The Court finds the instant petition partially meritorious.

As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. In exceptional cases,[16] however, the Court may delve into and resolve factual issues when, among others, there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when the lower courts come up with conflicting positions, as in this case. Hence, the Court is constrained to review and resolve the factual issues in order to settle the controversy.

The CA ruled that the conflict in the findings should be referred to a third doctor agreed jointly by the parties. In

absence of referral to a third doctor, the findings of the company-designated physicians should be affirmed. Paleracio did not offer any reason what prevented him from following the procedure. He deprived the company-designated physicians the chance to rebut his own doctor's findings by filing the complaint a day after consulting the latter.

As per Paleracio's Contract[17] dated March 12, 2012, his employment is covered by the 2010 POEA-SEC. Pertinent portion of Section 20 (A) of the POEA-SEC reads:

Section 20-A. Compensation and Benefits for Injury or Illness. —

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

3. 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 the 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. (emphasis supplied)

x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician, and (2) the appointed doctor of the seafarer refuted such assessment.[18]

It was held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.[19] However, it should be pointed out that a seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods.[20] In this case, the Court observes that there was no referral to a third doctor, and that the private physician's disability report was issued before the company-designated physician's certification. Hence, there is a need to examine whether the fit-to-work assessment is valid and timely.

The Labor Code and the Amended Rules on Employees Compensation (AREC) provide that the seafarer is considered to be on temporary total disability during the 120-day period within which the seafarer is unable to work. If the temporary total disability lasted continuously for more than 120 days, except as otherwise provided in the Rules, then it is considered as a total and permanent disability.[21] However, the temporary total disability

period may be extended up to a maximum of 240 days when the' sickness still requires medical attendance beyond the 120 days but not to exceed 240 days.

The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability.[22] To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.[23] Alternatively put, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. To avail of the extended 240-day period, company-designated physician must first perform some significant act to justify an extension, e.g., when the seafarer's illness or injury would require further medical treatment or when the seafarer was uncooperative with the treatment. Should the physician fail to do so and the seafarer's medical condition remains unresolved, the seafarer's disability shall be deemed totally and permanently disabled.[24]

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]

The Court is not unmindful of the declaration that the extent of seafarer's disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognized based on his resulting incapacity to work and earn his wages.[26] However, the disability gradings under Section 32 of the POEA-SEC should be properly established and contained in a valid and timely medical report of a company-designated physician for it to be considered. The foremost consideration of the courts should be to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein cannot be seriously appreciated.[27]

Paleracio consulted his physician on February 7, 2013 and secured the latter's opinion on March 14, 2013. When he filed a complaint for permanent total disability benefits on February 8, 2013, 134 days had lapsed from the time he arrived on September 27, 2012. Meanwhile, the company-designated physician issued the fit-to-work certification on March 21, 2013 or after the lapse of 175 days.

As previously stated, the company-designated physician must provide sufficient justification to extend the original 120-day period of assessment. It must be remembered that the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period of treatment or assessment.[28] The Court finds that there was no other document to establish that the company-designated physician had declared the necessity for extension of the treatment or assessment period to address the temporary disability. In fact, there was no medical report of the treatment or the various medical tests and procedures was ever presented. Dr. Bautista's certification merely mentioned the amount of time that has lapsed since the surgery, and declared Paleracio fit to return to work without restrictions despite the latter's complaint of occasional pain when lifting heavy objects. In absence of evidence of the declaration of the need for further treatment, the period within which the company-designated physician must issue an assessment was not duly extended to 240 days. Consequently, the March 21, 2013 Certification does not matter as it was issued beyond the authorized 120-day period.

The lack of a conclusive and definite medical assessment from the company-designated physicians, which left Paleracio nothing to properly contest, negates the need to comply with the third-doctor referral provision under

the POEA-SEC. Without a valid final and definite assessment from the company-designated physician, the law already steps in to consider the seafarer's disability as total and permanent.[29] He had rightfully commenced his complaint for disability compensation. One of the causes of action for total and permanent disability benefits enumerated by the Court in *C.F. Sharp Crew Management, Inc., et al. v. Taok*,[30] was if the company-designated physician failed to issue a declaration as to the seafarer's 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.[31]

Anent the issue on the mandatory post-employment examination, the LA dismissed the complaint, and concluded that there was no compliance with the mandatory reportorial requirement based on his allegations on the date of, his arrival and the date he was referred to the company-designated physician. Respondents insist that Paleracio failed to report to them within three days upon his arrival

It was held that the three-day mandatory reporting requirement must be strictly observed since within three days from repatriation, it would be fairly manageable for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment. Moreover, the post-employment medical examination within three days from arrival is required to ascertain the seafarer's physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to seafarers claiming disability benefits that are not work-related or which arose after the employment.[32]

The POEA-SEC also requires the employer to act on the report, and in this sense partakes of the nature of a reciprocal obligation. Reciprocal obligations are those which arise from the same cause, and where each party is effectively a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other.[33] While the mandatory reporting requirement obliges the seafarer to be present for the post-employment medical examination, which must be conducted within three (3) working days upon the seafarer's return, it also poses the employer the implied obligation to conduct a meaningful and timely examination of the seafarer.[34]

Respondents claimed that Paleracio came to them five days upon disembarkation. He underwent hematology test on October 7, 2012, and was referred to the company-designated physician only on October 8, 2012. As there was no evidence that he caused the delay, the LA erred in considering the said date of referral to conclude that he failed to comply with the reportorial requirement. We note that he arrived in the Philippines on a Thursday. It is emphasized that the POEA-SEC specifically provided for three working days and not calendar days. Respondents could have easily presented any proof of the normal working days of the manning agency to support their allegation that he indeed reported for post-employment medical examination beyond the authorized period. It would be highly inequitable to the State's policy on labor to resolve this doubt against him. The Court finds that although his claim that he immediately reported to the manning agency is unsubstantiated, respondents' denial is also bare. Under the evidentiary rules, a positive assertion is generally entitled to more weight than a plain denial.[35]

It is the oft-repeated rule that whoever claims entitlement to the benefits provided by law should establish his right to the benefits by substantial evidence.[36] The burden to prove entitlement to disability benefits lies on Paleracio, thus, he must establish that he had suffered his injury which resulted to his disability during the term of the employment contract. The "Doctor's Requestion Form" wherein Dr. Partanen indicated that he had contusion and experienced pain in his right arm two days before his arrival, and the company-designated physician's diagnosis of neglected radial shaft fracture on his right arm on October 8, 2012 are consistent with his contention that he figured in an accident which injured his right arm on September 5, 2012. Even though he was repatriated due to a

finished contract, he was able to prove that he sustained the injury during his employment.

Lastly, the Court has consistently held that attorney's fees cannot be recovered as part of damages based on the policy that no premium should be placed on the right to litigate. The authority of the court to award attorney's fees under Article 2208 of the Civil Code requires factual, legal, and equitable grounds. They cannot be awarded absent a showing of bad faith in a party's tenacity in pursuing his case even if his belief in his stance is specious. Verily, being compelled to litigate with third persons or to incur expenses to protect one's rights is not a sufficient reason for granting attorney's fees.[37] Here, Paleracio was not able to prove that respondents acted in bad faith in refusing to acknowledge his claims. This Court, thus, deems it inappropriate to award attorney's fees. It is noted that in an Order[38] dated June 16, 2014, as supported by a disbursement voucher,[39] the LA released the amount equivalent in Philippine peso of the US\$80,000.00 and the corresponding attorney's fees awarded by the NLRC to Paleracio. The attorney's fees awarded should be reimbursed in view of the finding that such award is inappropriate.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Decision dated June 17, 2016 and the Resolution dated November 22, 2016 of the Court of Appeals in CA-G.R. SP No. 135418 are hereby **REVERSED** and **SET ASIDE**. The Decision and Resolution, dated January 30, 2014 and February 28, 2014, respectively, of the National Labor Relations Commission in NLRC NCR CASE NO. 02-02169-13 are hereby **AFFIRMED WITH MODIFICATION** that the award of attorney's fees is **DELETED**. Petitioner Edilberto R. Paleracio is **ORDERED** to **RETURN** the amount he received as attorney's fees.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Perlas-Bernabe, Caguioa, and A. Reyes, Jr., JJ., concur.

[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting concurring; rollo, pp. 38-51.

[2] Id. at 54-55.

[3] Penned by Commissioner Pablo C. Espiritu, Jr., with Commissioners Alex A. Lopez and Gregorio O. Bilog III concurring; records, pp. 170-181.

[4] Records, pp. 201-203.

[5] Doctor's Requestion Form, id. at 47.

PAIN IN ARM.

CONTUSION/BRUISE OF THE UPPER ARM/RIGHT

ECZEMA/ALLERGY

[6] Records, pp. 49-50.

[7] Id. at 51.

[8] Id. at 53.

[9] Id. at 55.

[10] Id. at 76.

[11] Penned by Labor Arbiter Gaudencio P. Demaisip, Jr.; id. at 137-142.

- [12] *Id.* at 180-181. (Emphasis in the original)
- [13] Rollo, pp. 50-51. (Emphasis in the original)
- [14] *Id.* at 53. (Emphasis in the original)
- [15] *Id.* at 25 and 33.
- [16] *Interiorient Maritime Enterprises, Inc. v. Remo*, 636 Phil. 240 (2010).
- [17] Records, p. 29.
- [18] *Marlow Navigation Philippines, Inc., et al. v. Osias*, 773 Phil. 428, 446 (2015).
- [19] *Philippine Hammonia Ship Agency, Inc., et al. v. Dumadag*, 712 Phil. 507, 521 (2013).
- [20] *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 737-738 (2013).
- [21] Labor Code, Article 198 (c) (1), and AREC, Rule VII, Section 2 (b).
- [22] *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.*, 765 Phil. 341, 364 (2015).
- [23] *Id.*
- [24] *Id.* at 360.
- [25] *Marlow Navigation Philippines, Inc., et al. v. Osias*, *supra* note 18, at 443.
- [26] *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue, Jr.*, *supra* note 22, at 358, citing *INC Navigation Co., Philippines, Inc., et al. v. Rosales*, 744 Phil. 774, 786 (2014).
- [27] *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 245 (2015).
- [28] *Aldaba v. Career Philippines*, G.R. No. 218242, June 21, 2017.
- [29] *Talaroc v. Arpaphil Shipping Corp.*, G.R. No. 223731, August 30, 2017.
- [30] 691 Phil. 521 (2012).
- [31] *C.F. Sharp Crew Management, Inc., et al. v. Taok*, *supra*, at 538.
- [32] *Heirs of Dela Cruz v. Philippine Transmarine Carriers, Inc., et al.*, 758 Phil. 382, 394-395 (2015).
- [33] *Career Philippines Shipmanagement, Inc., et al. v. Serna*, 700 Phil. 1, 15 (2012), citing *Cortes v. Court of Appeals*, 527 Phil. 153, 160 (2006), citing Tolentino, Arturo, *Commentaries and Jurisprudence the Civil Code of the Phils.*, Vol. IV, 1985 edition, p. 175.
- [34] *Id.* (Emphasis ours)
- [35] *Id.* at 14-15.
- [36] *Manota, et al. v. Avantgarde Shipping Corp., et al.*, 715 Phil. 54, 63 (2013).
- [37] *Heirs of Dela Cruz v. Philippine Transmarine Carriers, Inc.*, *supra* note 32, at 401.
- [38] Records, p. 246.
- [39] *Id.* at 256.

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