

**MALAYSIAN INTERNATIONAL SHIPPING CORPORATION AND
BOTELHO MARITIME AGENCIES, INC..PETITIONERS, VS. MARCOS
LARIZA, NATIONAL SEAMEN'S BOARD AND HON. BLAS F.
OPLE, RESPONDENTS.**

G.R. No. 50029. November 16, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Herein assailed on Certiorari is the Decision of respondent National Seamen's Board (NSB), affirming the Labor Arbiter's award of US\$24,000.00 to private respondent Marcos LARIZA for "permanent total disability" to his left knee.

On April 26, 1976, LARIZA entered into a contract of employment with petitioner Malaysian International Shipping Corporation, represented in the Philippines by its co- petitioner Botelho Maritime Agencies, Inc. (jointly referred to as PETITIONERS), whereby he was hired as Chief Engineer aboard the vessel M/V "Bungi Seripagi" for a period of one year, with a monthly salary of US\$2,360.00, plus US\$15.00 monthly uniform allowance.

The contract of employment provided, among others, for illness and injury compensation benefits, thus:

When the employee sustains any injury, he shall be accorded full wages, sustenance and medical expenses until he rejoins a vessel or is repatriated to his country of origin.

In the event of illness or injury, wages, maintenance and medical expense shall be borne by the owners in accordance with Malaysian Act or Ordinance."

Attached to the employment contract was a "Scale of Compensation" providing for the following compensation benefits:

1. Death 100%
2. Permanent Total loss of sight of both eyes 100%
3. Permanent Total loss of sight of one eye 50%
4. Loss of two limbs 100%
5. Loss of one limb 50%
6. Permanent Total loss of sight of one eye and loss of one limb 100%
7. Permanent Total disablement (other than loss of sight of one or both eyes or loss of limb) 100%
8. Temporary Total disablement Not covered
9. Temporary Partial disablement Not covered

Medical Expenses:

Medical expenses will, in addition, be paid by the Underwriters up to but not exceeding 15 percent of the total amount of any claim admitted under Item 8 or 9.

Master US \$ 28,000.00

Chief Officer 20,000.00

2nd Officer 12,000.00

3rd Officer 9,000.00

Chief Engineer 24,000.00

2nd Engineer 20,000.00

R/O, Electrician/3rd Engineer 12,000.00

each

(Italics supplied)

PETITIONERS deny, however, that the foregoing Scale was part of its employment contract with LARIZA.

On December 27, 1976, while the vessel was anchored at Port Gdynia, Poland, LARIZA, while in the performance of his duties, fractured his left knee necessitating removal of the left patella. LARIZA was confined and operated on in an hospital in Poland and was subsequently repatriated. Sometime in January, 1977, he was subjected to another operation at the Makati Medical Center after which he underwent physical therapy up to September, 1977.

LARIZA was paid his wages, originally only up to January, 1977, but upon his complaint, PETITIONERS paid him up to May, 1977.

Dissatisfied, LARIZA filed a Complaint before respondent National Seamen's Board for recovery of unpaid wages up to September, 1977, and disability compensation benefits for the injury which, he alleged, rendered him incapable permanently for work.

The Hearing Officer dismissed the claim for unpaid wages since LARIZA had been paid his three months' wages after repatriation, but ordered PETITIONERS to pay him compensation benefits of US\$ 24,000.00 for "permanent total disablement" under Item No. 7 of the "Scale of Compensation."

On appeal, the NSB affirmed the Labor Arbiter's ruling that the "Scale of Compensation" was applicable since it formed part of the contract of employment. In a subsequent Order, respondent Minister of Labor ordered the Sheriff to proceed with the execution of the Decision.[1] Hence, this Petition.

We resolved to give due course. Previous to that, we issued a Writ of Preliminary Injunction and/or Preliminary Mandatory Injunction restraining respondents from enforcing the order of garnishment issued by the NSB in the sum of P161,700.00 and from turning over the said amount to LARIZA. Upon LARIZA's manifestation, however, that he had already received and spent the amount, we ordered LARIZA to return the same considering that PETITIONERS had filed a bond in the sum of P192,202.00 to answer for the questioned award. Still, LARIZA failed to comply and we issued an Order of arrest. However, upon manifestation by PETITIONERS, we required LARIZA, instead, to include in his Memorandum a detailed accounting of how he had disposed of the amount in so short a time. That Memorandum has not been submitted and the records show that another Resolution of this

Court dated September 30, 1981, could no longer be served on LARIZA, the return from the postal office reading "removed."

What is the nature of LARIZA's injury and to what extent are petitioners liable? These are the issues to be resolved.

The Report (Exhibit "C") prepared by the orthopedic and physical therapeutic surgeon, Dr. Tyrone Reyes, dated September 30, 1977, after LARIZA had undergone rehabilitation treatment states:

"1. He still lacks about 20° of full flexion in the left knee and therefore he is not able to squat squarely.

"2. He is able to kneel for short period of time is able to negotiate stairs, although some difficulty because of complaint of pain in the left knee. Activity tolerance and endurance is fair.

"From the rehabilitation standpoint, I feel that we have achieved the highest attainable progress through conservated means. The patient has plateaued in his progress in physical therapy in the last two weeks and no further improvements therefore could be reasonably expected. We have thus recommended the termination of his rehabilitation program with us last September 29, 1977." [2]

A subsequent Medical Report dated December 15, 1977 of Dr. Cesar P. Unas (Exhibit " E") reads:

"Medical Report

Re: Ch. Engr. MARCOS LARIZA

Engr. Lariza, 49 years old, chief Engineer by profession, consulted today for pre-employment medical examination. He had history of left knee injury sustained December 1976. Fractured patella (lower half) was removed and later underwent physio-therapy.

Pertinent Physical findings: Patient limps on walking, left knee swollen compared to the normal right knee. Flexion of the left knee is limited with pain on weight bearing, left side.

Recommendation : Due to the nature of his work on board the ship not to mention rough weather, he needs to go up and down narrow and inclined stairs. He is incapable to perform normal sea duty.

REMARKS: UNFIT to work as Chief Engr. on board the vessel.

(SGD) CESAR P. UNAS, M.D."[3]

On the basis of the foregoing and the testimony of LARIZA himself, the NSB concluded that the injury suffered by LARIZA was "permanent total disability."

It should be noted, however, that in the Medical Summary (Exhibit "D") prepared by Dr. Tyrone Reyes he also stated that as far as LARIZA's "left knee disability is concerned from medical standpoint, it may be classified as PERMANENT/PARTIAL." As LARIZA himself had declared in his Affidavit (Exhibit "D"), at the same time that he was arguing for "Permanent Total Disablement":

"*** **"

"5. That in accordance with the report of Dr. Tyrone M. Reyes who attended to me in the Philippines, from the medical standpoint my disability may be classified as PERMANENT/PARTIAL. Permanent in the sense that in my profession as Chief Engineer I may be considered as permanently disabled because I cannot go up and down to the engine room, I cannot withstand cold weather and cannot perform my usual duties as Chief Engineer, and Partial in the sense that I can still use my left leg for walking."

Dr. Reyes, after LARIZA's physical therapeutic treatment, further summarized:

"The strength of the muscle of the left-lower extremity is much improved, especially that of the left quadricups. Functionally, Mr. Lariza is able to perform the following tasks:

"(a) Ambulate independently without the use of any assistive device;

"(b) Independent in the different activities of daily living;

"(c) Transfer independently from bed to chair to standing and the like; and

"(d) His activity tolerance and endurance is fair." [4]

It would appear, therefore, that LARIZA's left knee injury had not rendered him totally and permanently disabled. The left knee was only partially injured. The use of the left leg was neither physically nor functionally lost. It is significant, too, that the Report of Dr. Unas (Exhibit "E") mentions that LARIZA had consulted for "pre-employment medical examination," which can only mean that he was still not disabled from seeking further employment.

And although LARIZA may no longer be able to discharge the duties of his former position as Chief Engineer, it does not necessarily follow that his disability should be considered as permanent and total. Permanent and total disability means any impairment of mind or body rendering it impossible for the insured to follow continuously a substantially gainful occupation, without seriously impairing his health, the disability being permanent when of such nature as to render it reasonably certain to continue through the lifetime of the insured.[5] Incapacity or disability cannot be found to be total where it appears that the claimant's earning power is not wholly destroyed and that he is still capable of performing remunerative employment.[6] Thus, evidence that a truck driver after injury to his left arm could drive a truck, load and unload merchandise but that it took him longer to do the work than it did before he was injured, sustained a finding that the employee suffered a "partial permanent disability." [7]

Since LARIZA's disability must be held to be permanent and partial, he is entitled to compensation under Item 5 of the Scale of Compensation, or US\$12,000.00 (50% of \$24,000.00) computed at the exchange rate at the time the Labor Arbiters rendered judgment on March 20, 1978.

PETITIONERS' argument that the Scale of Compensation is not applicable is unacceptable considering the NSB finding of fact that "such scale was attached to the employment contract and therefore a part of such contract." [8]

WHEREFORE, judgment is hereby rendered modifying the judgment appealed from in that petitioners shall pay private respondent, Marcos Lariza, 50% of US\$24,000.00, or US\$12,000.00, computed at the rate of exchange of the dollar to the peso on March 20, 1978. Any amount in excess of what respondent Marcos Lariza has already received shall be refunded to petitioners. Conversely, any amount still owing shall be paid by petitioners to private respondent.

No costs.

SO ORDERED.

Teehankee, Actg. C.J., Plana, Relova, Gutierrez, Jr., and de la Fuente, JJ., concur

[1] Rollo, p.41.

[2] Ibid., p. 190.

[3] Ibid., p. 189.

[4] Ibid., p. 245.

[5] U.S. vs. Eliasson, C.C.A. Mont. 20F (2d), 821, 823.

[6] Simien vs. Haas-Hirsch Estate (La. App.) 278 So. 2d 836; Deson vs East Butte Copper Mining Com. 78 Mont 579, 254 P 880; Mickey vs. Omaha Steel Works, 136 Neb 843, 287 NW 645, cited in 82 Am. Jur. 2d 137.

[7] Washington vs. Holmes & Barnes, La. App., 4 So. 2d 51.

[8] NSB Decision, p.3.

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