

SECOND DIVISION

[G.R. No. 202113, June 06, 2018]

RICKY B. TULABING, PETITIONER, VS. MST MARINE SERVICES (PHILS.), INC., TSM INTERNATIONAL LTD., AND/OR CAPT. ALFONSO R. DEL CASTILLO, RESPONDENTS.

[G.R. No. 202120]

MST MARINE SERVICES (PHILS.), INC., TSM INTERNATIONAL LTD., AND/OR CAPT. ALFONSO R. DEL CASTILLO, PETITIONERS, VS. RICKY B. TULABING, RESPONDENT.

DECISION

REYES, JR., J:

Consolidated in this case are the petitions for review on *certiorari* under Rule 45 of the Rules of Court filed: (1) by Ricky B. Tulabing (Tulabing) against MST Marine Services (Phils.), Inc. (MST), TSM International Ltd. (TSM), and/or Capt. Alfonso R. Del Castillo (MST, et al.) in G.R. No. 202113; and (2) MST, et al. against Tulabing in G.R. No. 202120. The petitions seek to assail the Decision^[1] dated September 12, 2011 and Resolution^[2] dated May 23, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 117319.

The Antecedent Facts

MST is a Philippine-registered manning agency engaged in the recruitment of seafarers for its foreign principal, TSM, a Norwegian shipping company.^[3]

Tulabing is a seafarer formerly under the employ of TSM. His employment was covered by the Norwegian International Ship Register collective bargaining agreement (NIS-CBA), between the Norwegian Shipowners' Association (NSA), on the one hand, and the Associate Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and the Norwegian Seafarer's Union (NSU), on the other.^[4]

On August 23, 2007, MST, in behalf of TSM, employed Tulabing as GP2 Wiper for the vessel M/T Champion. Covered by a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment, Tulabing's employment was for a period of nine months with a basic monthly salary of US\$454.00.^[5]

On September 13, 2007, Tulabing embarked on his voyage on board M/T Champion and commenced the performance of his duties pursuant to his Contract.^[6]

Sometime in January 2008, while engaged in the performance of his duties, he felt a

sudden crack on his back which was followed by a severe pain and numbness of the left side of his body. He was referred to a physician in Brazil for medical evaluation and was given medicine. Initially, the medicine accorded Tulabing some relief from the pain but eventually his condition aggravated and radiated to his left shoulder and upper extremities.^[7]

Subsequently, Tulabing complained of chest pain, hence, he was referred by the vessel master to Dr. J.J. Voorsluis (Dr. Voorsluis) of the Medical Centre for Seamen in Amsterdam, Netherlands for medical examination. Dr. Voorsluis diagnosed him of cervical neuralgia and prescribed him oral medication therefor. He was declared unfit to work for four days with the recommendation that should his medical condition fail to improve, he should be repatriated back to the Philippines.^[8] On June 13, 2008, Tulabing was repatriated back to the Philippines.^[9]

On June 17, 2008, Tulabing reported to Dr. Nicomedes Cruz (Dr. Cruz), the company-designated physician for medical evaluation. Dr. Cruz confirmed Dr. Voorsluis' diagnosis of Tulabing's cervical neuralgia and noted the persistence of his upper back pain which continued to radiate to his left shoulder and upper left extremities. Dr. Cruz issued a Medical Report, ordering an x-ray of Tulabing's cervical spine and his referral to an orthopedic surgeon for specialized examination, and directing him to return for further evaluation.^[10]

On June 26, 2008, Dr. Cruz, following the orthopedic surgeon's evaluation of Tulabing's condition, issued a second Medical Report with the following diagnosis and directives, *viz.*:

The patient was seen by our orthopedic surgeon and noted the result of the cervical spine x-ray-

Cervical spondylosis C4C5 and C5C6 and Reversal of cervical lordosis. He recommends MRI of the cervical spine and advised referral to rehabilitation medicine for physical therapy.

DIAGNOSIS:

Cervical spondylosis C4C5 and C5C6

Reversal of cervical lordosis

MEDICATION:

Moxen

Trevoca

Advised to come back on July 03, 2008^[11]

The result of Tulabing's Magnetic Resonance Imaging (MRI) indicated the following findings, *viz.*

MULTI-LEVEL DISC DESSICATION WITH MILD REVERSAL OF THE
NORMAL LORDOSIS BROAD-BASED DISCS PROTRUSIONS FROM C3-C4

CUADAD TO C5-C6 CAUSING MINIMAL THECAL SAC INDENTATION AND
BILATERAL NEURAL FORMINAL COMPROMISE.^[12]

Tulabing underwent physical rehabilitation from October to December of 2008 under the medical attention of specialist Dr. Reynaldo Matias (Dr. Matias). Dr. Matias, who regularly submitted to Dr. Cruz his evaluations of Tulabing's condition, suggested that on the basis thereof Dr. Cruz give Tulabing a disability grading.^[13]

On November 14, 2008, Dr. Cruz assessed Tulabing's condition as Grade 10 disability, viz.:^[14]

Disability grading under the POEA schedule of disabilities is grade 10 - moderate stiffness or two thirds (2/3) loss of motion of the neck.

Tulabing, however, did not agree. He demanded from MST the payment of maximum disability compensation in the amount of US\$70,000.00 pursuant to Article 12 of the NIS-CBA which provides:^[15]

ARTICLE 12

If a seafarer due to no fault of his own, suffers an occupational injury or an occupational disease while serving on board or while traveling to or from the vessel or Company's business or due to marine peril, and as a result his ability to work is permanently reduced. partially or totally, the Company shall pay him disability compensation which including the amounts stipulated by the POEA's rules and regulations shall be maximum:

Radio Officers	
Chief Stewards, Electricians	
Electro Technician	USD\$90,000.00
Ratings	USD\$70,000.00

MST denied Tulabing's claim and instead offered him compensation in the amount of US\$14,105.00. Tulabing refused the offer, insisting that his disability was permanent and total, hence, his entitlement to full compensation. In an attempt at an amicable settlement, the parties initially submitted the dispute to the AMOSUP pursuant to the grievance procedure specified in the NIS-CBA but no settlement was obtained thereat.^[16]

On July 20, 2009, Tulabing filed with the National Labor Relations Commission (NLRC) a complaint against MST for payment of permanent total disability benefits of US\$70,000.00 pursuant to the NIS-CBA, reimbursement of medical expenses, and payment of moral and exemplary damages as well as attorney's fees. Tulabing

claimed that his disability was of such nature that no amount of medication or therapy can restore him to his former physical condition and enable him to resume his customary work and that based on the medical findings, the severity of his disability rendered remote and uncertain the possibility of his future employment for overseas work.^[17]

MST denied liability on the ground that under the provisions of his employment contract and the NIS-CBA, a seafarer is only entitled to claim maximum disability compensation of US\$70,000.00 if the company-designated physician declares him to be suffering from Grade 1 disability. They likewise denied liability for damages and attorney's fees, contending good faith and full compliance with their contractual obligations, viz.: (1) that Tulabing received full monetary provision for his medical expenses prior and subsequent to his repatriation; and (2) that Tulabing was offered a just disability settlement in the amount of US\$14,105.00 as sanctioned by the POEA-SEC and the NIS-CBA.^[18]

On December 29, 2009, Labor Arbiter (LA) Catalino R. Laderas rendered a Decision^[19] in favor of MST, ordering the latter to pay Tulabing the amount of US\$14,105.00 and attorney's fees equivalent to 10% of the amount adjudged.

Unsatisfied with the LA's award of disability compensation, Tulabing appealed to the NLRC, asserting his entitlement to the full permanent total disability compensation of \$70,000.00.^[20]

During the pendency of his appeal, Tulabing consulted orthopedic surgeon Dr. Alan Leonardo Raymundo (Dr. Raymundo) of the Philippine Orthopedic Institute, Makati City. In a Medical Report dated June 15, 2010, Dr. Raymundo diagnosed Tulabing of cervical neuropraxia and declared him unfit for resumption of duty, viz.:

On physical examination, the patient can ambulate well without any support. Manual motor testing shows a 4/5 muscle power involving the area of the deltoids as well as all the muscle compartments of the upper and lower extremities on the left side. He has sensory deficits affecting the left side of the face and the entire left side of the body as well as the upper and lower extremities on the left. There is hypereflexia of the deep tendon reflexes. There is also noted atrophy of all the muscles on the left upper and left lower extremities.

DIAGNOSIS: CERVICAL NEUROPRAXIA

RECOMMENDATIONS:

With the present condition of the patient he is not fit to return to his previous work duty.^[21]

On August 16, 2010, the NLRC rendered its Decision, setting aside the LA's decision, viz.:

WHEREFORE, premises considered. the Decision dated 29 December 2009 is hereby SET ASIDE and a NEW ONE entered declaring the disability of [Tulabing] to be permanent total thereby ordering respondents jointly and severally liable to pay [Tulabing) the amount of SEVENTY THOUSAND (\$70,000.00) US DOLLARS or its peso equivalent at the time of actual payment representing his disability benefits, plus 10% attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.^[22]

On September 21, 2010, MST moved for reconsideration but the same was denied by the NLRC. Undeterred, MST filed a petition for *certiorari* in the CA imputing grave abuse of discretion on the NLRC in awarding full disability benefits and attorney's fees to Tulabing.

On September 12, 2011, the CA rendered a Decision^[23] affirming the earlier decision of the NLRC but modified the award of attorney's fees, viz.:

WHEREFORE, the petition for *certiorari* is **PARTLY GRANTED**. The August 16, 2010 Decision of public respondent NLRC is **AFFIRMED with MODIFICATION**, reducing the award of attorney's fees to US\$1,000.00.

SO ORDERED.^[24]

Both parties filed their respective motions for reconsideration but the same were denied by the CA in its Resolution^[25] dated May 23, 2012.

Hence, these consolidated petitions.

The Issues^[26]

Tulabing seeks partial reversion of the assailed CA decision, specifically as to the amount of attorney's fees. He posits that the CA erred when it ruled that he is entitled only to US\$1,000.00 attorney's fees instead of the US\$7,000.00 previously awarded by the NLRC.

On the other hand, MST, et al. put forth the following grounds:

1. The CA committed serious reversible error of law in refusing to give weight and credence to the final assessment of the company-designated physician that Tulabing's disability is grade 10, in complete disregard of the ruling of the Court in *Magsaysay Maritime Corp., et al. v. NLRC (2nd Division), et al.*^[27] and *Vergara v.*