

## SECOND DIVISION

[ CA-G.R. SP. NO. 131466, May 20, 2014 ]

**BILL CARLO DC CASTRO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), AND MARLOW NAVIGATION PHILS., INC., MARLOW NAVIGATION CO. LTD., DS SCHIFFAHRT GMBH & CO. KG., RESPONDENTS.**

### DECISION

**SALAZAR-FERNANDO, J.:**

Before this Court is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Decision dated May 8, 2013<sup>[2]</sup> and the Resolution dated June 13, 2013<sup>[3]</sup> of the National Labor Relations Commission (NLRC), Second Division in NLRC LAC No. 04-000296-10 (RA-04-13) NLRC NCR OFW-M-02-02630-09 entitled "Marlow Navigation Phils., Inc., Marlow Navigation Co., LTD., DS Schiffahrt GMBH & Co., KG., *Complainants-Appellants, vs. Bill Carlo DC Castro, Respondent-Appellee.*", the dispositive portions of which read:

Decision dated May 8, 2013:

**"WHEREFORE**, premises considered, the Appeal is hereby **GRANTED**. The Decision dated February 27, 2013 is hereby **REVERSED**. Complainants Marlow Navigation Phils. Inc. and Marlow Navigation Co. Ltd. DS Schiffahrt GMBH & Co., KG. are declared liable to pay the respondent the amount of **THIRTEEN THOUSAND SIXTY US DOLLARS (US\$13,060.00)** or its peso equivalent.

All other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>[4]</sup>"

Resolution dated June 13, 2013:

**"WHEREFORE**, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

No further motion of this nature shall be entertained.

**SO ORDERED.**<sup>[5]</sup>"

The facts are:

On December 8, 2006, petitioner Bill Carlo DC Castro (petitioner for brevity) was hired as a Deck Cadet by private respondent Marlow Navigation Phils., Inc., for and in behalf of its principal, private respondent Marlow Navigation Co. Ltd., DS Schiffahrt GMBH & Co. KG. (herein collectively referred to as private respondents for brevity).<sup>[6]</sup> After petitioner passed the required Pre-Employment Medical

Examination, he was deployed on December 29, 2006 to his assigned vessel, M/V "Cape Henry", where he was supposed to work for twelve (12) months. His contract was extended for another five (5) months.<sup>[7]</sup> On December 29, 2007, one year after his deployment, petitioner had an accident while securing the gangway of the vessel. He got caught in a steel cable and injured his left arm, forearm and hand, left submandibular area, back and left lateral chest area.<sup>[8]</sup> He was initially treated at a hospital facility in Bangladesh,<sup>[9]</sup> and repatriated on January 10, 2008. He was referred to the company-designated doctor, Dr. Natalio Alegre II at the NGA Medical Clinic.<sup>[10]</sup> Thereafter, he underwent a series of operations and treatments for his injuries, which left him to suffer multiple fractures in his hand, underwent bone grafting and amputation of his fingers.<sup>[11]</sup> After his rehabilitation, the company-designated doctor issued on April 28, 2008 a Grade "9" disability assessment of his injury based on the POEA Standard Employment Contract (POEA-SEC for brevity).<sup>[12]</sup> He was offered an amount of US\$13,060.00 as payment of his disability benefit but he refused to accept the same.<sup>[13]</sup> On February 12, 2009, private respondents filed a Complaint<sup>[14]</sup> for Compulsory Arbitration against the petitioner to settle their dispute on the amount of disability benefits to be paid. However, petitioner moved for the dismissal of the complaint on the ground of lack of jurisdiction.<sup>[15]</sup> Both the Labor Arbiter<sup>[16]</sup> and the NLRC<sup>[17]</sup> dismissed the case for lack of jurisdiction, but this ruling was reversed by this Court in its Decision<sup>[18]</sup> dated September 22, 2011. With the finality of this decision,<sup>[19]</sup> the case was remanded to Labor Arbiter Catalino R. Laderas for further proceedings<sup>[20]</sup> but the latter inhibited from handling the case.<sup>[21]</sup> It was re-raffled to Labor Arbiter Michelle Pagtalunan (Labor Arbiter for brevity), who held a series of mandatory conferences but no settlement was reached by the parties, thus they were required to submit their respective position papers.<sup>[22]</sup>

In his Position Paper,<sup>[23]</sup> petitioner alleged that he cannot be compelled to accept the unreasonable amount of US\$13,060.00 as payment for his disability claim. He contended that the labor arbiter was not sanctioned by law to handle the present controversy, which is akin to an action for tender of payment and consignment, falling within the jurisdiction of the regular court. Furthermore, he argued that the compensation scheme for death and/or disability provided under the POEA Standard Employment Contract (POEA-SEC for brevity) was meant to set the minimum protection extended to seafarers but never intended to limit the latter's remedies/claims against its foreign employers. He maintained that the work related injuries which he sustained while on board private respondents' vessel caused him to suffer total and permanent disability, rendering him completely disabled and unable to perform his usual tasks as a seaman. His permanent impairment led to a substantial loss in his earning capacity for which he should be compensated with the maximum disability benefit in the amount of US\$60,000.00 as per POEA-SEC. He also asked for reimbursements for his medical and transportation expenses which private respondents allegedly withheld, and payment for moral and exemplary damages, attorney's fee plus legal interest on his money claims for the undue delay in the payment of his disability benefits.

Private respondents, on the other hand, countered in their position paper<sup>[24]</sup> that petitioner is only entitled to the amount of US\$13,060.00 based on the Grade "9" disability assessment of their company-designated physician, in accordance with the

"Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted" and "Schedule of Disability Allowances" provided in the POEA-SEC. According to private respondents, the amount of disability benefit is determined by the disability assessment issued by the company-designated physician in relation to the Schedule of Disability or Impairment provided in the POEA-SEC and not dependent on the inability of the seafarer to go back to work post-injury. They argued that the alleged incapacity suffered by the petitioner which prevented him from working again does justify payment of the full/maximum disability benefit. Rather, the disability should be assessed on the grading provided in the POEA-SEC, and the amount corresponding to the assessed injury should be paid to the disabled seafarer. To pay anything more than the amount of the assessed injury sustained is a breach of contract and an infringement of the protection of the shipowners against unreasonable claims guaranteed by the POEA-SEC.

On February 27, 2013, the Labor Arbiter dismissed the complaint for lack of merit.<sup>[25]</sup> Private respondents appealed to the NLRC.<sup>26</sup> On May 8, 2013, public respondent NLRC reversed the findings of the labor arbiter and rendered the assailed decision.<sup>[27]</sup> Petitioner filed a Motion for Reconsideration<sup>[28]</sup> but said motion was denied.<sup>[29]</sup>

Hence, this petition based on the following grounds:<sup>[30]</sup>

I.

THERE IS PRIMA FACIE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF PUBLIC RESPONDENT NLRC IN RULING THAT PETITIONER IS ONLY ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS EQUIVALENT TO GRADE 9 RELYING SOLELY ON THE DECLARATION OF THE COMPANY-DESIGNATED PHYSICIAN.

II.

THERE IS PRIMA FACIE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF PUBLIC RESPONDENT WHEN IT UNREASONABLY IGNORED THE OVERWHELMING EVIDENCE IN SUPPORT OF PETITIONER'S ENTITLEMENT TO THE MAXIMUM DISABILITY BENEFITS IN THE AMOUNT OF US\$60,000.00.

(A) PETITIONER IS TOTALLY AND PERMANENTLY DISABLED CONSIDERING THAT HE COULD NO LONGER RETURN TO WORK AS A SEAFARER, THE JOB HE WAS ACCUSTOMED TO PERFORM.

(B) CONTRARY TO THE FINDINGS OF THE COMPANY-DESIGNATED DOCTOR, PETITIONER'S INJURY IS EQUIVALENT TO GRADE 1.

(C) PETITIONER IS SUFFERING FROM TOTAL AND PERMANENT DISABILITY SINCE HE REMAINS INCAPACITATED FOR A PERIOD OF MORE THAN 120 DAYS.

III.

THERE IS PRIMA FACIE ABUSE OF DISCRETION ON THE PART OF PUBLIC RESPONDENT IN DISMISSING PETITIONER'S CLAIM FOR MEDICAL AND TRANSPORTATION REIMBURSEMENTS AS WELL AS PAYMENT OF MORAL

AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES DESPITE PRIVATE RESPONDENTS' BRAZEN DISREGARD TO COMPLY WITH THEIR CONTRACTUAL OBLIGATIONS.

#### IV

THE DECISION OF THE HONORABLE PUBLIC RESPONDENT CONTAINS SERIOUS ERRORS IN ITS FINDINGS OF FACTS AND LAW WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO PETITIONERS.

The petition is without merit.

Petitioner claims that public respondent NLRC committed a mistake in upholding the "Grade 9" disability assessment of the company-designated doctor, maintaining that his injury should be classified as a "Grade 1" injury entitling him to the payment of the maximum disability benefit in the amount of US\$60,000.00 instead of only US\$ 13,060.00. This contention leads to the pivotal question of whether the disability assessment made by the company designated doctor should be the basis for determining the amount of disability benefit awarded to petitioner.

While it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, this does not preclude the seafarer from seeking a second opinion.<sup>[31]</sup> Even the POEA-SEC recognizes the prerogative of the seafarer to request a second opinion and to consult a physician of his choice.<sup>[32]</sup> Jurisprudence further states that if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made.<sup>[33]</sup> In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury.<sup>[34]</sup> These pieces of evidence will in turn be used to determine the benefits rightfully accruing to him.<sup>[35]</sup> But petitioner did not avail of this option. As the one who alleges a critical fact, petitioner is bound to establish his claim with substantial evidence.<sup>[36]</sup> Here, petitioner merely declared that he is entitled to receive more than what the company-designated doctor assessed, but failed to provide any evidence/basis or even a second opinion from a doctor of his choice to support his claim. Significantly, without substantial evidence from which reasonable basis for the grant of benefits prayed for can be drawn, this Court is left with no choice but to deny his petition, lest an injustice be caused to the employer.<sup>[37]</sup> While it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is 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.<sup>[38]</sup>

Concomitantly, petitioner's claim for reimbursements, damages and attorney's fees must also fail. To reiterate, the party who alleges a claim, carries the burden of proof<sup>[39]</sup> to support the allegation, and this requires substantial evidence.<sup>[40]</sup> Substantial evidence refers to that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[41]</sup> Using this as a standard,