

SECOND DIVISION

[G.R. No. 207507, February 17, 2021]

DOEHLE-PHILMAN MANNING AGENCY, INC., DOEHLE (IOM) LIMITED,[1] AND CAPT. MANOLO T. GACUTAN, PETITIONERS, VS. JOSE N. GATCHALIAN, JR., RESPONDENT.

DECISION

LOPEZ, M., J.:

Before this Court is a Petition for Review on *Certiorari*^[2] assailing the Decision^[3] dated January 25, 2013 and Resolution^[4] dated June 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 116313, which granted respondent Jose N. Gatchalian, Jr.'s (Jose) claim for disability benefits and sickness allowance.

Antecedents

Jose had been working as Chief Cook for Doehle-Philman Manning Agency, Inc. (Doehle-Philman), and its principal Doehle (IOM) Ltd. (Doehle) since 2002. On June 8, 2006, he signed a nine-month contract to serve as Chief Cook onboard M/V Independent Endeavor,^[5] and boarded the vessel on July 17, 2006.^[6]

On December 4, 2006, Jose experienced intense and unbearable pain in his right knee. He reported to the ship captain that sometime in August 2006, he figured in an accident when his left foot slipped forward causing his right kneecap to hit the iron deck and took the full weight of his fall. When the vessel docked in Antwerp, Belgium, he was examined by Dr. R. Verbist and was referred to an orthopedic doctor at St. Vicentus Hospital. There, Dr. Greet Erven (Dr. Erven) examined Jose, assessed him with "TEAR MEDIAL MENUSCUS FRACTURED OSTEOFY," recommended operation on his knee, and declared him "unfit for duties on board." On December 6, 2006, following Dr. Erven's recommendation, Dr. R. Van Ceempoel operated on Jose for *partial meniscectomy partial medial and corpus librum right knee*. After his operation, Jose was medically repatriated on December 12, 2006. Upon arrival in the Philippines, the company-designated doctors subjected him to further evaluation, therapy, and operation.^[7]

On December 15, 2006, the company-designated surgeon removed the skin sutures around the post arthroscopic surgery of Jose and scheduled him for post-surgery physical therapy sessions. By January 11, 2007, he completed four sessions of physical therapy. He was examined by an orthopedic specialist, who noted reduction of pain and mobility with improvement in stability, and recommended continuous treatment. On February 9, 2007, the orthopedic surgeon observed a marked improvement on the strength and stability of Jose's right knee.^[8] Subsequently, on February 14, 2007, the company-designated doctor issued a final assessment that Jose was fit to work, with the following observations:

Mr. Gatchalian reported to our clinic last February 12, 2007 for final evaluation. He has with him the final report from his physical therapist which stated that the patient's condition has remarkably improved. The strength of the right knee extensors and right knee flexors are both 5/5. Pain felt on the medial side of the knee decreased from 5/10 to 1/10 although minimal pain is still felt on the affected part, patient is now able to perform weight bearing activities without any difficulty. Patient was advised to maintain strengthening exercise of the right knee. Based on this, our physiatrist and orthopedic surgeon considered Mr. Gatchalian now fit to work.^[9]

On February 11, 2009, after almost two years, Jose filed a complaint for total disability benefits, sickness allowance, damages, and attorney's fees against Doehle-Philman, Dochle and Captain Manolo Gacutan (collectively, petitioners). Jose anchored his claim on a medical certificate - dated May 18, 2009, issued by Dr. Angel Chua (Dr. Chua) of St. Lukes Medical Center - which diagnosed him with *Traumatic Arthritis*, and assessed him with *permanent partial disability*, to wit:

This is to certify that Mr. Jose N. Gatchalian, Jr., 58 years old, male[,] is presently suffering from severe pain in the right knee because of traumatic arthritis of the right knee joint. Past history revealed that he underwent Arthroscopic Meniscectomy of the right knee after a knee injury on the ship sometime in December of 006. But since then, despite operation, he cannot walk properly and always walk with an antalgic gait. Therefore, I recommend Permanent Partial Disability with diagnosis of Traumatic Arthritis right knee joint.^[10]

On October 14, 2009, the Labor Arbiter (LA) dismissed Jose's complaint for lack of merit. The assessment made by the company-designated doctor was given more credence since he attended to Jose's condition and treatment from the time of repatriation until he was declared fit to work on February 14, 2007. On the other hand, Jose's independent physician saw him only once. Also, since Jose was timely declared fit to work after 60 days of treatment, Jose is no longer entitled to sickness allowance beyond that period. Nevertheless, the LA awarded P150,000.00 as financial assistance.^[11]

Both parties appealed to the National Labor Relations Commission (NLRC).^[12] On June 10, 2010, the NLRC affirmed the LA's Decision, with modification in that the award of financial assistance was deleted.^[13] Jose sought reconsideration, but was denied.^[14] Thus, he filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA.

On January 25, 2013,^[15] the CA granted the petition and ruled that Jose is entitled to permanent total disability benefits. Jose sustained his injury due to an accident on board the ship, and underwent meniscectomy. The CA gave credence to the diagnosis of Jose's doctor, that he is suffering from traumatic arthritis, and concluded that it is work related. As an effect of the operation, there was increased risk of developing wear and tear arthritis (post traumatic arthritis or osteoarthritis), which is an occupational disease.^[16] Also, while it was recognized that the delay in the filing of the claim casts doubt on the link of his present condition and the injury he sustained while he was on the ship, petitioners' failure to employ him after he

was declared fit to work is contrary to his supposed fitness to work. Jose was employed by petitioners from 2002 until his repatriation in December 2006, yet he was not engaged by petitioners after he was declared fit to work.^[17] Moreover, Jose is entitled to sickness allowance for the remainder of the 120-day period after he was declared fit to work.^[18] The CA likewise granted attorney's fees, and disposed as follows:

WHEREFORE, the petition is **GRANTED**. The assailed 10 June 2010 Decision and 27 July 2010 Resolution of the National Labor Relations Commission are **REVERSED** and **SET ASIDE**. [Doehle-Philman, Doehle and Gacutan] are held jointly and severally liable to pay [Jose] permanent and total disability benefits of US\$60,000.00, sickwages, and attorney's fees often percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.

SO ORDERED.^[19] (Emphases in the original.)

Petitioners moved for reconsideration, but was denied.^[20] Hence, this petition.^[21] Petitioners essentially argue that the CA erred in disregarding the fit to work assessment made by the company-designated doctor, which is more credible than that made by Jose's independent physician. The assessment made by Jose's doctor is doubtful because Jose only consulted her after the lapse of almost two years,^[22] which time can no longer be deemed reasonable. In addition, Jose failed to invoke the joint appointment of a third doctor. Petitioners also fault the CA in ruling that Jose's failure to work for a period of 120 days justified the award of permanent total disability benefits.^[23] It was Jose who did not report back or reapply for employment, and it was not petitioners' fault that he was not rehired.^[24] Considering the company-appointed physician's findings, petitioners maintain that Jose's condition is not compensable.^[25]

For his part, Jose echoes the CA's ruling that he was not fit to work since he was not re-employed by the petitioners even after two years from the company doctors' fit to work assessment.^[26]

In their reply, petitioners point out that the non-hiring of an employee does not establish the employee's disability.^[27]

Issue

The sole issue for resolution of this Court is whether the CA erred in reversing the NLRC's finding that Jose was properly declared to be fit to work.

Ruling

The petition is meritorious.

The principle that this Court is not a trier of facts applies with greater force in labor cases.^[28] The question of whether the seafarer was properly declared fit to work is one of fact, hence, is beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*.^[29] Also, we are aware that the CA undertook a Rule 65 review

- not a review on appeal - of the NLRC decision challenged before it. This means that our task is only to examine whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the NLRC. There is no need to go over the evidence presented before the labor tribunals to ascertain if these were appreciated and weighed correctly.^[30] However, by way of exception, when there is a conflict in the factual findings of the LA and NLRC as opposed to that of the CA, as in this case, it behooves the Court to review and re-evaluate the questioned findings in the exercise of its equity jurisdiction.^[31] Here, both the LA and the NLRC gave credence to the fit to work assessment made by the company-designated doctor.^[32] On the contrary, the CA rejected the fit-to-work assessment and reversed the labor tribunals' ruling on the ground that Jose has not been employed by petitioners despite being declared fit to work.^[33]

We do not agree with the CA.

There is no basis for Jose to claim total and permanent disability benefits from petitioners.

A seafarer's entitlement to disability benefits is a matter governed not only by medical findings, but also by law and contract. The material statutory provisions are Article 197 to 199 of the Labor Code,^[34] in relation to Section 2(a), Rule X of the Amended Rules on Employees' Compensation. By contract, the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), the parties' collective bargaining agreement, if any, and the employment agreement between the seafarer and the employer are pertinent. Specifically, Section 20-B of the POEA-SEC^[35] prescribes the mechanism and procedure on how the seafarer can legally demand and claim disability benefits from the employer/manning agency for an injury or illness suffered while on board the vessel to wit:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

B. 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:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

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. 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.

4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.
5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event that the seafarer is declared (1) fit for repatriation[;] or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.
6. In case of permanent total or partial disability of the seafarer caused by either it jury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this 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. (Emphases supplied.)

Time and again, we emphasize that the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three days from arrival for diagnosis and treatment. He is on temporary total disability for the duration of the treatment, but in no case to exceed 120 days, because he is totally unable to work. During which time, he shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally. If the 120-day initial period is exceeded and no declaration is made because the seafarer requires further medical attention, then the temporary