

SECOND DIVISION

[G.R. No. 247778, February 17, 2021]

JEROME D. PALADA, PETITIONER, VS. CROSSWORLD MARINE SERVICES KAPAL (CYPRUS), LTD, AND KAPAL (CYPRUS), LIMITED, RESPONDENTS.

D E C I S I O N

INTING, J.:

Assailed in the present Petition for Review on *Certiorari*^[1] are the Decision^[2] dated February 18, 2019 and the Resolution^[3] dated June 11, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 156886. The CA reversed and set aside the Decision^[4] dated April 2, 2018 and the Resolution^[5] dated July 23, 2018 of the Panel of Voluntary Arbitrators in MVA-100-RCMB-NCR-168-03-06-2017^[6] which awarded *total and permanent disability benefits* and attorney's fees to Jerome D. Palada (petitioner).

The Antecedents

On May 6, 2016, Crossworld Marine Services, Inc., in behalf of its foreign principal, Kapal (Cyprus) Limited (collectively, respondents), hired petitioner as an ordinary seaman on board the vessel MIV Eurocargo Venezia with a contract duration of eight months.^[7] Petitioner's employment was covered by the *ITALIAN CBA for NON DOMS*, a collective bargaining agreement (CBA).^[8]

Petitioner was deployed to board the vessel on May 20, 2016. On July 11, 2016, petitioner was accidentally hit by a moving vehicle on board the vessel while he was loading and parking a trailer. He was immediately given first aid and thereafter brought to a medical facility in Malta where he was diagnosed with "*trauma successive dorsal contusion of lumbo sacral spine*." Petitioner continued to experience pain on his back despite the various medications prescribed to him. As a result, he was repatriated on July 18, 2016.^[9]

Petitioner was referred to Dr. Rodolfo P. Bergonio (Dr. Bergonio), the company-designated physician, at the Marine Medical Services, where he was examined and treated from July 21 to October 27, 2016. Petitioner was initially diagnosed to be suffering from "*soft tissue contusion; upper thoracic cage and left anterior chest wall; chronic mild T4 compression fracture*." As such, he was advised to start formal physical therapy and to take pain and muscle relaxant medications.^[10]

After a series of treatments in a span of two months, petitioner still continued to feel pain in his chest and upper back area whenever he tried to lift objects.^[11] Thus, on October 27, 2016, Dr. Margarita Justine O. Bondoc (Dr. Bondoc), also a company-designated physician, gave him an *interim assessment* of a Grade 11 disability for

having slight rigidity, or 1/3 loss of lifting power of the trunk.^[12]

On November 8, 2016, Dr. Bergonio declared petitioner as fit to work from an orthopedic standpoint as suggested by a supposed Functional Assessment done by a certain Dr. Basuil.^[13]

Unsatisfied, petitioner consulted another physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira), an orthopedic surgeon at the Armed Forces of the Philippines Medical Center, regarding his medical condition. After examination, Dr. Magtira concluded, among others, that petitioner is "*permanently UNFIT in any capacity to resume his sea duties as a Seaman.*"^[14]

This prompted petitioner to file a complaint for payment of disability benefits against respondents with the National Conciliation and Mediation Board (NCMB). When the parties failed to settle the case amicably during the mandatory conferences, the Panel of Voluntary Arbitrators directed the parties to submit their respective position papers.^[15]

Ruling of the Panel of Voluntary Arbitrators

In the Decision^[16] dated April 2, 2018, the Panel of Voluntary Arbitrators ruled in favor of petitioner and ordered respondents to pay him the amount of US\$60,000.00 as disability benefits, or its peso-equivalent at the time of payment, plus attorney's fees.^[17]

The Panel of Voluntary Arbitrators rejected the fit-to-work assessment made by Dr. Bergonio given that: (a) the assessment was inconclusive and open to inquiries as it was without the relevant supporting test results;^[18] and (b) despite the declaration of fitness to work, petitioner was not redeployed to resume his sea duties as an Ordinary Seaman.^[19] The NCMB thus concluded that the company-designated physician had failed to make a definite and final assessment on petitioner's fitness to work within the 120 to 240-day periods; and that for this failure, petitioner is deemed totally and permanently disabled and entitled to the benefits corresponding thereto in accordance with the CBA and the Philippine Overseas Employment Administration (POEA)-Standard Employment Contract (SEC).^[20]

Undaunted, respondents brought the case to the CA through a Petition for Review^[21] under Rule 43 of the Rules of Court.

Ruling of the CA

In the Decision^[22] dated February 18, 2019, the CA granted the petition and reversed and set aside the Decision of the Panel of Voluntary Arbitrators. It explained as follows:

First, petitioner had been given a Grade 11 disability rating by the company-designated physician because he was only suffering from a slight rigidity, or 1/3 loss of motion or lifting power of the trunk. As such, he should be deemed to be 12% disabled under Annex 5 of the CBA on account of his back pains with some reduction

of mobility.^[23]

And *second*, the findings of the company-designated physician should prevail over those of Dr. Magtira, petitioner's private physician, in the absence of an opinion of a third doctor to resolve the conflicting findings as to petitioner's fitness to resume his sea duties.^[24]

The dispositive portion of the Decision reads:

WHEREFORE, the Petition for Review filed by the petitioner is hereby GRANTED. The Decision dated April 2, 2018 and Resolution dated July 23, 2018, which were both rendered by the National Conciliation and Mediation Board in the case docketed as AC-041-RCMB-NCR MVA-168-03-06-2017 are hereby REVERSED and SET ASIDE.

Respondent Jerome D. Palada is hereby found not to be totally and permanently disabled. As such, the award of full disability benefit and attorney's fees to Respondent Jerome D. Palada are hereby DELETED. Petitioner, however, is hereby ordered to pay respondent his disability compensation in the amount of USD7,465 which is equivalent to Grade 11 disability under the POEA Contract, or its peso equivalent at the time of actual payment, plus interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until full satisfaction.

SO ORDERED.^[25]

Hence, this petition.

The Issues

I.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN UPHOLDING THE QUESTIONED ASSESSMENTS OF THE COMPANY-DESIGNATED PHYSICIAN.

II.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT FAILED TO HOLD THAT PETITIONER'S DISABILITY IS PERMANENT AND TOTAL IN THE ABSENCE OF A DEFINITE AND FINAL ASSESSMENT OF FITNESS OR PERMANENT DISABILITY FROM THE COMPANY-DESIGNATED PHYSICIAN WITHIN THE 240-DAY PERIOD.^[26]

Petitioner maintains that the Grade 11 disability rating he received was only an interim assessment which was not yet final. He further avers that the fit-to-work assessment was also not definite, certain or final because Dr. Bergonio himself was not sure of the existence of the pain that he is continuously suffering.^[27]

In their Comment, respondents assert that the CA correctly ruled that petitioner is not totally and permanently disabled. After specialized treatments and medication, and upon close monitoring, the company-designated physicians arrived at their evaluation of petitioner. Thus, petitioner was given a Grade 11 disability rating and

later on, assessed as fit to work.^[28]

The Court's Ruling

The petition is impressed with merit.

To determine whether a seafarer is entitled to total and permanent disability benefits, the Court takes into consideration *the law, the employment contract* which govern his or her overseas employment, and *the medical findings* as to his or her medical condition in accordance with the pertinent rules.^[29]

The law that governs a seafarer's disability benefits claim is Article 198 [192] (c) (I) of the Labor Code of the Philippines (Labor Code), as amended, which provides:

ARTICLE 198. [192] *Permanent Total Disability.* - x x x

x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

Moreover, Section 2, Rule X of the Amended Rules on Employees' Compensation states:

Sec. 2. Period of Entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. *If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid.* However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Italics supplied.)

The employment of seafarers, including claims for disability benefits, is governed by the contracts they executed at the time of their engagement. While it is true that the seafarer and his or her employer are bound by their mutual agreement, the POEA Rules and Regulations require that the applicable POEA-SEC be deemed *integrated* in every seafarer's employment contract.^[30]

In this case, the parties executed the employment contract on May 6, 2016.^[31] Thus, the 2010 POEA-SEC is applicable in order to determine petitioner's entitlement to disability benefits.^[32] Section 20 of the 2010 POEA-SEC states:

SECTION 20. COMPENSATION AND BENEFITS. -

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related