

## THIRD DIVISION

[ G.R. No. 229451, February 10, 2021 ]

**ABNER P. SALONGA, PETITIONER, VS. SOLVANG PHILIPPINES, INC. AND/OR SOLVANG MARITIME AS AND VIRGILIO A. LOPEZ, JR., RESPONDENTS.**

### D E C I S I O N

**INTING, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by Abner P. Salonga (petitioner) seeking to set aside the Decision<sup>[2]</sup> dated September 15, 2015 and the Resolution<sup>[3]</sup> dated January 17, 2017 of the Court of Appeals (CA) in CAG.R. SP No. 139319. The CA Decision partially granted the Petition for *Certiorari* (with Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction)<sup>[4]</sup> filed by Solvang Philippines, Inc. and/or Solvang Maritime As and Virgilio A. Lopez, Jr. (collectively, respondents), reducing the total and permanent disability benefits of US\$60,000.00 awarded to petitioner by the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 04-000322-14/NLRC NCR Case No. OFW (M) 07-10798-13 to only a partial permanent disability compensation of US\$22,020.00. The CA Resolution, on the other hand, denied petitioner's Motion for Reconsideration (Of the Decision dated September 15, 2015).<sup>[5]</sup>

#### *The Antecedents*

Respondents hired petitioner as Chief Steward under a nine-month Philippine Overseas Employment Administration (POEA) Contract of Employment<sup>[6]</sup> dated April 3, 2012. After undergoing a pre-employment medical examination, he was declared fit to work. He then joined the vessel MN Clipper Hebe on May 15, 2012.<sup>[7]</sup>

In his Position Paper (For the Complainant),<sup>[8]</sup> petitioner alleged that sometime in July 2012, while carrying the newly issued provisions on board, he suddenly felt pain on his neck and back. He ignored the pain and continued to work. However, he suffered severe back and neck pains every night, coupled with high fever and numbness of both arms and legs.<sup>[9]</sup>

In October 2012, when petitioner could no longer stand the pain, he approached the Master of the vessel for help. He was then brought to a nearby hospital in the port of Indonesia, but no doctor was available to examine him and the vessel was about to leave. As such, petitioner was not given any medical attention.<sup>[10]</sup>

On November 11, 2012, petitioner was brought to a local hospital in Bangkok, Thailand where he underwent x-ray and medical examination. He was diagnosed to have C-spondylosis, myofascial pain, and L-spondylosis; he was given the remark

"not unfit."<sup>[11]</sup> He was advised to consult a rehabilitation doctor after the initial medication for physical therapy.<sup>[12]</sup>

Petitioner returned to the vessel and resumed his duties as Chief Steward. However, due to the unbearable pain and the Master's refusal to send him back to the Philippines for examination, petitioner requested to be medically repatriated. Consequently, he was required to execute a letter requesting for the early termination of his contract.<sup>[13]</sup>

On January 12, 2013, petitioner arrived in the Philippines and immediately reported to respondents' office the next day. He was referred to the Metropolitan Medical Center where he underwent a series of medical examinations, such as x-ray and magnetic resonance imaging of the cervical spine and the lumbosacral spine. The examination showed that petitioner was suffering from: (1) cervical spondylosis; (2) broad-based disc-osteophyte complexes and facet/ligamentous Hypertrophy at L4-5 and L5-S1, with moderate bilateral foraminal narrowing; and (3) mild L2-3 and L3-4 disc bulges and mild ligamentum flavum and facet hypertrophy.<sup>[14]</sup>

The company-designated physician refused to issue him a disability assessment and no declaration was ever issued as to his fitness to work. Due to the gravity of petitioner's injury and the refusal of the company-designated physician to issue an assessment, petitioner consulted Dr. Allan Leonardo R. Raymundo, M.D. (Dr. Raymundo), an independent Orthopedist, for a second opinion on June 25, 2013. He was diagnosed by Dr. Raymundo to be suffering from carpal tunnel syndrome and nerve root impingement of the lumbar spine and was given the following remark: "*[t]he patient's present condition will no longer make him fit to return to work.*"<sup>[15]</sup>

In July 2013, despite the fact that he was still suffering from a lumbar and spine injury, petitioner was told by the company-designated physician that his medical assistance was discontinued by respondents.

In denying petitioner's claim for permanent disability benefits, respondents in their Position Paper<sup>[16]</sup> claimed that upon repatriation, petitioner was referred to the company-designated physician, Dr. Robert Lim (Dr. Lim), who referred him to Dr. William Chuasuan (Dr. Chuasuan), an Orthopedic Surgeon. During his treatment, petitioner was noted to improve with the therapy. There was "*decreased pain on paracervical and paralumbar areas from pain scale of 7/10 to 5/10; there was note of resolution of neck spasm; there was improved range of motion of the cervical area.*" Allegedly, Dr. Lim issued the following interim assessments. Grade 12 (neck) – flight stiffness of neck; and Grade 8 (back) – 2/3 loss of lifting power.<sup>[17]</sup>

On May 23, 2013, Dr. Chuasuan, in turn, allegedly issued final disability ratings, viz.: Grade 12 (cervical) – 1/3 loss of motion; and Grade 8 (trunk) – 2/3 loss of lifting power.<sup>[18]</sup>

#### *Decision of the Labor Arbiter (LA)*

In a Decision<sup>[19]</sup> dated March 7, 2014 in NLRC NCR Case No. OFW (M) 07-10798-13, the LA ruled in favor of petitioner and ordered respondents to jointly and solidarily pay petitioner the amount of US\$110,000.00 representing the disability compensation under the Collective Bargaining Agreement (CBA), plus 10% attorney's fees.<sup>[20]</sup>

The LA held that the assessment given by the company-designated physician that petitioner suffered only Grades 8 and 12 disability was not precise. The LA gave more weight to the evaluation given by petitioner's doctor of choice that petitioner was no longer fit to resume sea duties since he was still undergoing treatment. Given his medical condition, the LA held that petitioner was no longer capable of performing his job as a Chief Steward which required strenuous physical activities.<sup>[21]</sup>

The LA likewise found that petitioner sustained his injury while on board respondents' vessel as a result of a marine peril and held that he should be awarded a disability compensation for officers of the ship in the amount of US\$110,000.00 in accordance with the CBA. The LA also awarded medical and transportation reimbursement to him in the amount of P25,000.00 for having consulted another physician as a result of respondents' discontinuance of his medical support.<sup>[22]</sup>

Aggrieved, respondents appealed to the NLRC.

#### *Decision of the NLRC*

In the Decision<sup>[23]</sup> dated September 25, 2014, the NLRC partially granted the appeal of respondents by reducing the disability benefits of US\$110,000.00 awarded to petitioner by the LA to only US\$60,000.00 and deleting the P25,000.00 award of medical and transportation reimbursements.

The NLRC ruled that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or disability within the period of 120 or 240 days; otherwise, the seafarer shall be deemed totally and permanently disabled. It held that since the company-designated physician failed to issue a definite assessment of petitioner's disability within 120 days, his illness should be considered as total and permanent.<sup>[24]</sup>

As to the amount of compensation, the NLRC reduced petitioner's disability compensation award to US\$60,000.00, holding that the validity of the CBA was outside his employment period; thus, inapplicable to him.<sup>[25]</sup>

#### *Ruling of the CA*

In the assailed Decision<sup>[26]</sup> dated September 15, 2015, the CA found grave abuse of discretion on the part of the NLRC in awarding petitioner total and permanent disability benefits in the amount of US\$60,000.00. It set aside the ruling of the NLRC and held that petitioner's condition falls under the disability ratings of Grade 8 (trunk) and Grade 12 (cervical) for the total amount of US\$22,020.00, plus 10% attorney's fees.<sup>[27]</sup>

The CA disagreed with both the LA and the NLRC when they held that petitioner is entitled to total and permanent disability benefits on account of the failure of the company-designated physician to issue an assessment of petitioner's disability within 120 days from the time petitioner reported to respondents. The CA explained that "[a] seafarers inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor."<sup>[28]</sup> The CA pointed out that there was no basis for the NLRC to determine

that petitioner's injury merited a Grade 1 rating based merely on the fact that it lasted for more than 120 days.

The CA held that since the parties did not jointly seek the opinion of a third-party doctor who was supposed to make the final determination of petitioner's disability, the gradings given by the company-designated physicians prevail over the assessment made by the seafarer's doctor of choice. The CA pointed out that it was the company designated physicians who personally attended to petitioner shortly after his repatriation; and they were likewise the ones who examined, treated, and closely monitored petitioner's condition and provided him extensive medical care for several months. As such, the CA found the company-designated physicians to be in the best position to assess the degree of petitioner's disability.

Petitioner filed his Motion for Reconsideration (of the Decision dated September 15, 2015),<sup>[29]</sup> but the CA denied it in the Resolution dated January 17, 2017.

Hence, the petition.

### *The Issue*

The core issue at hand is whether petitioner is entitled to total and permanent disability compensation due to the failure of Dr. Chuasuan, the Orthopedic company-designated physician, to issue a definite medical assessment on petitioner's disability or fitness to work within the required 120 or 240-day period.

### *The Court's Ruling*

The Court finds merit in the petition.

Respondents claim that Dr. Chuasuan issued final medical assessments on petitioner's disability on May 23, 2013; that even before said date, Dr. Lim already issued interim assessments on petitioner's disability, viz.: Grade 12 (neck) – flight stiffness of neck; and Grade 8 (back) – 2/3 loss of lifting power.

*Dr. Chuasuan's failure to issue a final disability assessment on petitioner within the time frame required by law rendered petitioner's disability permanent and total by operation of law.*

Respondents rely on the CA's ruling that "*a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.*"

The Court in *Elburg Shipmanagement Phils., Inc., et al. v. Quiogue*<sup>[30]</sup> explained the rules governing a claim for total and permanent disability benefits, viz.:

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules (*rules*) shall govern:

1. The company-designated physician must issue a final