

THIRD DIVISION

[G.R. No. 236570, June 14, 2021]

LEMUEL DEOCAMPO, PETITIONER, VS. SEACREST MARITIME MANAGEMENT, INC., NORDIC TANKERS MARINE A/S DENMARK AND GEZIEL DE GUZMAN, RESPONDENTS.

D E C I S I O N

LOPEZ, J., J.:

It is the duty of a company-designated physician to issue a final and definite medical assessment within 120 days from the time the seafarer reported to him/her. An extension up to 240 days may be invoked only when the company-designated physician performs some significant act to show that the extension was sufficiently justified.

This Court resolves the Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated August 16, 2017 and the Resolution^[3] dated January 4, 2018 of the Court of Appeals (CA) in CA-GR. SP No. 146593, which reversed and modified the Panel of Voluntary Arbitrators' (PVA) Decision dated March 3, 2016 and, instead, denied the claim of Lemuel Deocampo for total and permanent disability benefits and attorney's fees.

The facts, as culled from the CA Decision, are as follows:

Lemuel Deocampo (*Lemuel*) was hired by Seacrest Maritime Management, Inc. (*Seacrest*), for and on behalf of employer Nordic Tankers Marine A/S-Denmark (*Nordic*), to work as a Fitter on board the vessel MT Harbour Clear, with a basic salary of US\$691.00.^[4] Lemuel was certified as fit for sea duty by the company physician and was allowed to board the vessel on October 2, 2014.^[5]

Lemuel signed a Contract of Employment with a "*ITF/IBFTCC FLEET Collective Bargaining Agreement (CBA)*," which provided for a greater benefit for permanent disability as a result of work-related illness or injury resulting from an accident, than that provided by the POEA Standard Employment Contract (*POEA-SEC*). Lemuel's Contract of Employment was also covered by the Compulsory Insurance Coverage for Agency-Hired Workers under Section 37-A of Republic Act No. (*R.A. No.*) 8042, as amended by Section of R.A. No. 10022.^[6]

As a Fitter, Lemuel's work was hard manual labor, which normally consisted of lifting of heavy loads; repair of engine, running motors, and vessel; welding and fabrication; lifting and transferring of pipes, equipment, and other heavy items; painting and rust removal; cleaning of empty tanks, air generator, oil filters and boilers; maintenance of purifiers, crane, mooring lines, anchor winches, injectors, generators; and other similar duties. Considering, further, that the ship was a chemical/oil tanker, Lemuel was regularly exposed to fumes, noxious gases, and other toxic elements.^[7]

On March 3, 2015, or almost five (5) months on board the ship, Lemuel complained of dizziness and fainted in the bathroom. He was later found to have an increased blood pressure. Lemuel was then referred to the Hospital Universitario Santa Lucia in Cartagena, Spain on March 30, 2015 where he was diagnosed with Acute Vestibular Syndrome of Peripheral Origin and was prescribed medication.^[8]

Lemuel was repatriated to Manila for treatment on April 5, 2015 and was referred to the Alegre Medical Clinic in St. Luke's Medical Center. A laboratory test conducted on April 9, 2015 showed that his cholesterol level was elevated.^[9]

On April 16, 2015, the company-designated physician, Dr. Alegre (*Dr. Alegre*), issued his 2nd Progress Report which stated that Lemuel was suffering from Syncope (fainting) and Benign Paroxymal Positional Vertigo (vertigo).^[10]

On July 22, 2015, Lemuel underwent a hearing test which showed that he had "mild to moderate conductive hearing loss on both ears." Further, the diagnosis of Lemuel's brain MRI scan conducted on May 21, 2015 stated "*Consider Gliosis or Chronic Lacunar Infarct, Left Corona Radiata.*" Gliosis is damage to the central nervous system, Chronic Lacuna Infarct means stroke, and the Left Corona Radiata refers to the location of the damage in the brain, "specifically at the left bundle of nerve cells which carry information from the cerebral cortex to the brain stem."^[11]

On August 12, 2015, after Lemuel underwent treatment, Dr. Alegre issued his 12th and Final Progress Report which stated:

The **vertigo** is refractory to treatment and persistent. Based on the POEA Contract Section 12, a **disability Grade 12** is given with the nearest similarity found under **Abdomen #5**, slight residuals of disorder resulting to **moderate tenderness**.^[12]

Dissatisfied with the findings of Dr. Alegre that he only suffers from Grade 12 partial disability, Lemuel sought the second opinion of Dr. Rommel Galvez (*Dr. Galvez*), an independent cardiologist. After examining Lemuel, Dr. Galvez issued a Medical Report dated August 19, 2015, diagnosing Lemuel with "Cerebrovascular Accident with Infarct on his Lacunar Area," or a small stroke in the subcortical areas of the brain. Dr. Galvez found Lemuel to be suffering from a permanent disability and stated that he "was unfit to work in any capacity as a seaman."^[13] The recommendation of Dr. Galvez reads:

This is to certify that Mr. Lemuel de Ocampo diagnosed case of Cerebrovascular Accident with Infarct on his Lacunar Area. He was also diagnosed with mild to moderate hearing loss on (sic) his both ears. At present patient still complains of on and off dizziness and hearing impairment. Based on all this (sic) findings he is unfit to work in any capacity as a seaman.^[14]

Notably, the records do not show whether Dr. Galvez conducted any tests on Lemuel and whether he based his recommendation on those tests.^[15]

Subsequently, Lemuel claimed from Seacrest and Nordic the balance of his 12-day sick leave amounting to US\$369.00, as well as reimbursement of his medical expenses amounting to P5,900.00. Both claims were rejected by Seacrest and

Nordic. When his condition did not improve despite treatment, Lemuel demanded payment of permanent and total disability benefits from Seacrest and Nordic, but also to no avail.^[16]

Thus, Lemuel filed an action under Article 20.1.3.1 in relation to Article 20.1.4 of the CBA against Seacrest and Nordic to collect permanent and total disability benefits, unpaid sick leave benefits, reimbursement for medical expenses, damages, and attorney's fees.^[17]

The PVA's Ruling

In a Decision dated March 3, 2016, the PVA ruled in favor of Lemuel and ordered Seacrest and Nordic to pay him permanent and total disability benefits in the amount of US\$129,212.00, unpaid sick leave pay of US\$369.00, and attorney's fees equal to 10% of the total claims.^[18]

In so ruling, the PVA held that Lemuel was fit when he started his job, but because of the toxic and arduous nature of his work aboard the ship, he suffered from fainting and vertigo during the term of his employment.^[19] The PVA also stated that the post-employment medical tests conducted on Lemuel confirmed that he was suffering from mild stroke, vertigo, and hearing loss in both ears.

Moreover, the PVA found as incorrect and not definitive the 12th and Final Progress Report of Dr. Alegre which assessed Lemuel's disability as Grade 12 under Section 32 (Abdomen, No. 5) of the POEA Standard Employment Contract. According to the PVA, disability under Section 32 (Abdomen, No. 5) refers to slight disorders in the intra-abdominal organs; whereas the post-employment medical tests conducted on Lemuel, as well as the second opinion of Dr. Galvez, revealed fainting, vertigo, mild stroke, and hearing loss—disorders relating to the nervous system and sense organs.

The PVA further noted that the 12th and Final Report of Dr. Alegre showed that Lemuel's disability was not yet resolved at the time it was issued on August 12, 2015 because Dr. Alegre stated that Lemuel's headache with vertigo and ringing in the ears was recurrent and persistent, and advised Lemuel to continue his medication. Considering also that the 12th and Final Report of Dr. Alegre was issued on August 12, 2015, or on the 129th day from the date Lemuel arrived in Manila on April 5, 2015, the PVA held that Lemuel was still incapacitated even after the 120-day period provided under Articles 191 to 193 of the Labor Code. The PVA opined that the unresolved medical condition of Lemuel might have even persisted 240 days beyond April 5, 2015 because the second opinion of Dr. Galvez made on August 19, 2015 stated that Lemuel was still suffering from on-and-off dizziness and hearing impairment, with no definitive medical report after that. Thus, the PVA concluded that Lemuel's disability is permanent and total which was compensable under the terms of the CBA.

Finally, the PVA granted Lemuel's prayer for unpaid sick leave pay in the amount of US\$369.00 for failure of Seacrest and Nordic to dispute it, and awarded attorney's fees stating that Lemuel was forced to litigate to protect his rights.^[20] The dispositive portion of the PVA Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Seacrest Maritime Management, Inc[.], Nordic Tankers Marine A/S Denmark, and Geziel De Guzman, to pay complainant Lemuel Dictado Deocampo, jointly and severally, the following:

1. Permanent and total disability benefits of US\$129,212.00;
2. Balance of sick leave pay of US\$369.00; and
3. Plus ten percent (10%) of the total claims representing the attorney's fees or its equivalent in Philippine Peso at the time of payment.

Other claims are dismissed for utter lack of substantial basis.

SO ORDERED.^[21]

Aggrieved, Seacrest and Nordic appealed the PVA Decision to the CA.

The CA Ruling

In a Decision^[22] dated August 16, 2017, the CA reversed and modified the PVA Decision and held that Lemuel was not entitled to permanent and total disability benefits and attorney's fees. It ruled that there was no doubt that the disability of Lemuel was permanent,^[23] but was only partial. It gave credence to the findings of Grade 12 disability by Dr. Alegre, which it said were supported by the results of the hearing test and laboratory examinations conducted on Lemuel, and not contradicted by Dr. Galvez's opinion.^[24]

Moreover, the CA held that there was no point in determining if Dr. Alegre issued his *12th and Final Progress Report* within the 120 to 240-day period because he already declared Lemuel's disability to be permanent.^[25] The dispositive portion of the CA Decision reads:

WHEREFORE, the Decision, dated 3 March 2016, of the Panel of Voluntary Arbitrators in MVA-086-RCMB-NCR-163-10-10-2015, ordering herein petitioners Seacrest Maritime Management, Inc. and Nordic Tankers Marine A/S - Denmark to pay herein respondent Lemuel D. Deocampo 100% of permanent and total disability benefits; unpaid sick leave pay of US\$369.00; and attorney's fees equal to 10% of total claims, is **REVERSED** and **MODIFIED** in that -

1. Petitioners are **ORDERED** to pay respondent a disability compensation in an amount equivalent to a Grade 12 rating of permanent partial disability, with interest at the legal rate of 6% per annum until fully paid.
2. The award of unpaid sick leave pay of US\$369.000 is **AFFIRMED** with interest at the legal rate of 6% per annum until fully paid.

The award of attorney's fees is **DELETED**.

SO ORDERED."^[26]

Lemuel's motion for reconsideration was denied in a Resolution^[27] dated January 4, 2018. Hence, this Petition.

The Issues

Lemuel raises the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING SELF-SERVING ASSESSMENT OF PARTIAL DISABILITY FROM A DOCTOR WHO WAS NOT AN EXPERT

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN GRANTING PARTIAL DISABILITY EVEN IF LEMUEL'S CONDITION REMAINS UNRESOLVED FOR A PERIOD OF MORE THAN 240 DAYS (*sic*); and

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN GRANTING ATTORNEY'S FEES BASED ON THE PARTIAL DISABILITY^[28]

Lemuel argues that Dr. Alegre's finding of partial disability is hearsay because he is not an expert, being neither a cardiologist or neurologist, but a rehabilitation doctor.^[29] Moreover, he contends that since he was not given a copy of the final assessment of Dr. Alegre, he had no obligation to dispute the final assessment by referring it to a third physician in accordance with Section 20(A)(3) of the POEA-SEC.^[30] Finally, Lemuel insists that he has been unfit for sea service from the onset of his disability on April 5, 2015 until the filing of his petition. Since it has been more than 240 days from the time he arrived in Manila, he says his disability is considered permanent and total.^[31]

In their Comment^[32] dated June 14, 2018, Seacrest and Nordic argue that the present petition should be dismissed outright for raising questions of fact.^[33] They further argue that the CA did not err in giving more weight to the diagnosis of Dr. Alegre considering that he attended to Lemuel for months, in contrast to the assessment of Dr. Galvez which was arrived at after a one-time examination only.^[34] Lastly, they emphasize that Dr. Alegre made his final assessment on the 129th day of medical treatment, or within the 240-day period; thus, Lemuel is not entitled to total and permanent benefits.^[35]

In his Reply^[36] dated June 29, 2018, Lemuel stated that his petition presents a question of law considering that "only the expert and attending physician of the seafarer should issue a medical certificate of fitness for work of disability within the threshold allowed under Articles 191-193 of the Labor Code, as amended."^[37]

The Ruling of the Court

The petition is granted.