

# FIRST DIVISION

[ G.R. No. 241674, June 10, 2020 ]

**ZALDY C. RAZONABLE, PETITIONER, VS. MAERSK-FILIPINAS CREWING, INC. AND/OR A.P. MOLLER A/S, RESPONDENTS.**

## DECISION

**CAGUIOA, J:**

This is a petition for review on *certiorari*<sup>[1]</sup> (Petition) under Rule 45 of the Rules of Court seeking the reversal of the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals (CA) dated May 4, 2018 and August 20, 2018, respectively, in CA-G.R. SP No. 148086.

### Facts

Respondents Maersk-Filipinas Crewing, Inc. (Maersk) and A.P. Moller A/S (A.P. Moller) are corporations involved in the maritime industry, with Maersk acting as the manning agency of the shipper, A.P. Moller.<sup>[4]</sup>

On March 24, 2015, Zaldy C. Razonable (Razonable) signed a Contract of Employment<sup>[5]</sup> with A.P. Moller through Maersk to work as an Ordinary Seaman on board the vessel MN Maren Maersk.<sup>[6]</sup> His employment for the said vessel, covered by the Associated Marine Officers' and Seamen's Union of the Philippines PTGWO-ITF (AMOSUP-PTGWO-ITF) and Danish Shipowners' Association (DSA) Collective Bargaining Agreement (CBA), was for a duration of six (6) months with a basic monthly salary of US\$450.00.<sup>[7]</sup>

On May 6, 2015, after Razonable suddenly felt a click on his back accompanied by mild to moderate pain while carrying a heavy ripper motor aboard the vessel, he was given first aid and was confined to his cabin.<sup>[8]</sup>

On June 11, 2015, he was brought to a hospital where he was diagnosed with "Prolapse Lumbar Disc L4-L5 and L5-S1, back pain with Sciatica". The foreign doctor also reported that Razonable needed further treatment, might need surgery if there was no improvement, and should be advised light duty.<sup>[9]</sup>

After Razonable's repatriation on June 17, 2015 and upon his arrival in Manila, he was placed in the care of company-designated physicians at respondents' accredited medical facility, Marine Medical Services, where he was given a full physical examination.<sup>[10]</sup> Razonable was also referred to a company-designated orthopedic surgeon, Dr. Rodolfo P. Bergonio (Dr. Bergonio), among others.<sup>[11]</sup>

It was recommended that Razonable undergo Laminectomy L-4 L-5 and Discectomy

L-5 for his back.<sup>[12]</sup> The recommended procedure was carried out by Dr. Bergonio on July 27, 2015 and Razonable was thereafter given a lumbar corset for back support,<sup>[13]</sup> as well as continued regular physical therapy and rehabilitation until October 9, 2015.<sup>[14]</sup> Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon) gave a follow-up report.<sup>[15]</sup> Dr. Bergonio gave a final disability assessment,<sup>[16]</sup> finding Razonable unfit for work with Disability Grade 11 - 1/3 loss of lifting power of the trunk.

Respondents informed Razonable of the final disability assessment and offered to him the commensurate disability benefits. However, Razonable refused and insisted on obtaining total and permanent disability benefits.<sup>[17]</sup> Thus, Razonable consulted another orthopedic expert, Dr. Manuel Fidel Magtira (Dr. Magtira), who issued a Medical Report<sup>[18]</sup> dated December 14, 2015 concluding that Razonable was permanently unfit in any capacity to resume his sea duties as a seaman.<sup>[19]</sup>

In a letter<sup>[20]</sup> dated February 2, 2016, Razonable's counsel informed the respondents about Dr. Magtira's opinion and that (1) Razonable was willing to be referred to a third doctor to confirm his present disability which had incapacitated him from resuming work as a seaman; and (2) Razonable was claiming total and permanent disability benefits in accordance with the law and the CBA. Respondents, however, ignored this letter and did not initiate the process of seeking the opinion of a third doctor as required by law.<sup>[21]</sup> Thus, Razonable filed a complaint before the National Conciliation and Mediation Board (NCMB), claiming total and permanent disability benefits in the amount of US\$80,000.00 as well as the payment of moral damages and attorney's fees.<sup>[22]</sup> Respondents, on the other hand, argued that Razonable's claim was limited only to Disability Grade 11 benefits.<sup>[23]</sup>

#### NCMB Ruling

On August 19, 2016, the NCMB rendered a Decision<sup>[24]</sup> ordering respondents to jointly and solidarily pay Razonable permanent and total disability benefits amounting to US\$80,000.00 pursuant to the CBA or its peso equivalent at the time of payment plus attorney's fees equivalent to 10% of the total monetary award.<sup>[25]</sup>

Respondents filed a Motion for Reconsideration<sup>[26]</sup> dated September 26, 2016, but this was denied by the NCMB.<sup>[27]</sup> Aggrieved, respondents filed a petition for review under Rule 43 with the CA.

#### CA Ruling

In a Decision<sup>[28]</sup> dated May 4, 2018, the CA granted respondents' petition and set aside the NCMB Decision based on the following grounds: (1) contrary to the NCMB findings, Razonable's injury was not due to an accident; (2) the award of US\$80,000.00 as total and permanent disability benefits was erroneous and without legal basis because this amount pertained to the CBA for Filipino ship officers and not the CBA for Filipino crew members or "ratings," which only awarded a maximum of US\$60,000.00; (3) the opinion of the company-designated physician deserved more credence; (4) Razonable was only entitled to Disability Grade 11 benefits, as assessed by the company-designated physician; and (5) Razonable was not entitled to attorney's fees. The dispositive portion of the Decision reads:

**WHEREFORE**, the Petition is **GRANTED**. The Decision of the NCMB dated 19 August 2016 is **SET ASIDE**. Razonable is only entitled to compensation corresponding to an Impediment Grade 11 compensation equivalent to **USD 7,465**.

**SO ORDERED.**<sup>[29]</sup>

Razonable filed a Motion for Reconsideration<sup>[30]</sup> dated May 31, 2018, but this was denied by the CA in a Resolution<sup>[31]</sup> dated August 20, 2018.

Thus, Razonable filed the instant Rule 45 Petition. Respondents filed their Comment<sup>[32]</sup> dated April 5, 2018 and Razonable thereafter filed his Reply on the Comment on the Petition for Review<sup>[33]</sup> dated August 28, 2019.

### ***Issue***

The main issue for the Court's resolution is whether Razonable is entitled to total and permanent disability benefits.

### ***The Ruling of the Court***

The Petition is meritorious. Razonable is entitled to total and permanent disability benefits.

*The company-designated physicians failed to issue a valid medical assessment within the prescribed periods*

Controversies regarding the seafarers' entitlement to disability benefits are governed by the law, the parties' contracts, and medical findings. Since Razonable's contract of employment with respondents was executed in 2015, the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) governs the procedure for his claim of disability benefits and provides for the period when the company-designated physician must issue a final medical assessment. Section 20(A) of the POEA-SEC reads:

## **SECTION 20. COMPENSATION AND BENEFITS**

### **A. 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:

x x x x

2. x x x 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. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance

from his employer in an amount equivalent to his basic wage computed **from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days.** Payment of the sickness allowance shall be made on a regular basis, but not less than once a month. (Emphasis supplied)

In the case of *Jebsens Maritime, Inc. v. Mirasol*,<sup>[34]</sup> the Court succinctly summarized the rules governing the seafarers' claim for disability benefits, the nature of the company-designated physician's medical assessment, and the prescribed periods for its issuance, thus:

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr. (Elburg)*, the Court summarized the rules when a seafarer claims total and permanent disability benefits, as follows:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

**A final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.**<sup>[35]</sup> (Emphasis and underscoring supplied; citations omitted)

Here, the CA gave more credence to the findings of the company-designated physicians. However, an examination of the medical assessment by the company-designated physicians - that is, the follow-up report<sup>[36]</sup> (Medical Report) given by Dr. Cruz-Balbon and the disability grading<sup>[37]</sup> (Disability Report) given by Dr. Bergonio, the orthopedic surgeon-would reveal that said assessment was neither final nor definite because it required Razonable to return for further treatment. The pertinent contents of the Medical Report and the Disability Report are reproduced below:

[MEDICAL REPORT DATED OCTOBER 9, 2015]

This is a follow-up report on OS Zaldy C. Razonable who was initially seen here at Marine Medical Services on June 17, 2015 and was diagnosed to have Sinusitis; Herniated Nucleus Pulposus, L4 - L5 and L5 S1; S/P Laminotomy L5, Right with L5 Discectomy; Foraminotomy L4; Left on July 27, 2015.

He was seen by the Orthopedic Surgeon.

Patient still complains of pain on the low back area.

Repeat EMG-NCV study showed there is electrophysiologic evidence of bilateral L5 radiculopathies with signs of acute exacerbation.

He was advised to continue his medication (Alanerv) and rehabilitation.

**He is to come back on November 5, 2015 for re-evaluation with results.**<sup>[38]</sup> (Emphasis supplied)

[DISABILITY REPORT DATED OCTOBER 9, 2015]

Re: Mr. Zaldy C. Razonable

Mr. Razonable is now 2 1/2 months out since his Spine Decompression. I reviewed his intra operative notes and I am reiterating the findings that I decompressed the L5 interspace, freed the S1 nerve root from any impingement and I even decompressed the L5 nerve root.

Since the patient still claims back pain, he is not ready to go back to work at this point.

**Final disability grading: Grade 11 - 1/3 loss of lifting power of the trunk.**

**Unfit for work.**

Thank you.<sup>[39]</sup> (Emphasis supplied)

Noteworthy is the fact that, despite the issuance of a purportedly "final disability grading" in the Disability Report, Razonable was still required to return almost a month later for "re-evaluation with results" in the Medical Report issued on the same day. Taking these two documents together, the medical assessment was