

THIRD DIVISION

[G.R. No. 244423, November 04, 2020]

**ROBERTO F. RODELAS, PETITIONER, VS. MST MARINE SERVICES
(PHILS.), RESPONDENT.**

DECISION

LEONEN, J.:

A seafarer does not lose the right to consent to the prescribed medical treatments of a company-designated physician. The employer has the option to either wait for the seafarer to consent to the procedure or to terminate it within the 120/240 day period in which it should make a final and definite assessment of the seafarer's disability. In terminating a seafarer's treatment, the employer either recognizes the lack of a final assessment, or the finality of its interim assessment.

This is a Petition for Review on Certiorari^[1] under Rule 45 of the Rules of Court, assailing the Decision^[2] and Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 142957. The Court of Appeals modified the decision of the Panel of Voluntary Arbitrators^[4] and found petitioner entitled to permanent partial disability benefits instead of permanent total disability benefits.

MST Marine Services (Phils.), Inc. (MST Marine), hired Roberto Rodelas (Rodelas), Jr. as Chief Cook aboard MV Sparta for its principal, Thome Management Private Limited.^[5] Rodelas is a member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) which had a collective bargaining agreement with MST Marine effective from January 1, 2012 to December 31, 2014.^[6]

Rodelas' duties as Chief Cook in MV Sparta included receiving provisions of the ship such as frozen fish and meat, maintaining these provisions, and preparing meals for the crew.^[7]

On May 6, 2014, Rodelas felt pain on his lower right abdomen and back. He was then brought to a clinic in South Korea where he was diagnosed with lumbar sprain.^[8] He was given medicine and was advised to undergo a Magnetic Resonance Imaging or Computed Tomography scan if the medication did not improve his condition.^[9]

On May 22, 2014, he was brought to a hospital in South Korea, where he was diagnosed with "Chronic Back Pain. HIVD-Herniated Inter Vertebral Disc L4L5 (bulging)[,]" a colon inflammation, and was declared unfit to work.^[10]

On May 24, 2014, Rodelas was repatriated to the Philippines.^[11] Two days after, he was referred to the company-designated physicians at Nolasco Medical Clinic for a post-employment medical exam.^[12] During the examination, he complained of back pain and abdominal discomfort. Thus, he was referred to an orthopaedic surgeon for

examination of his spine and a gastroenterologist.^[13] After a series of tests, his abdominal condition was diagnosed as "non-specific appendicitis" and was later declared to be asymptomatic and marked "resolved."^[14]

On May 30, 2014, he was examined by an orthopaedic surgeon for his back pain. The surgeon recommended that Rodelas undergo physical therapy for six (6) sessions and, if the pain subsists, to undergo an MRI of his spine.^[15] He was then diagnosed with "Lumbar Degenerative Disc Disease/Herniated Nucleus Pulposus."^[16] After completion of the sessions, he returned and complained of back pain and numbness of his right leg. Thus, the orthopaedic surgeon recommended an MRI of his spine and found:

VENTRAL AND BILATERAL DISC PROTRUSION MORE TOWARDS THE RIGHT SIDE AT L4-5 LEVEL WITH ACCOMPANYING DEGENERATIVE DISC DESSICATION CHANGES AND SLIGHT SPINAL CANAL STENOSIS.^[17]
(Citation omitted)

On July 4, 2014, the orthopaedic surgeon recommended that Rodelas undergo "Laminotomy, Discectomy[,] and Foraminotomy with application of spacer L4-5[,] " otherwise referred to as spine surgery, and to continue his medications.^[18] After several follow-up sessions, petitioner was undecided if he will undergo spine surgery.^[19]

On September 6, 2014, MST Marine sought the opinion of its designated physicians in Nolasco Medical Clinic whether the pain in Rodelas' lower right extremity was caused by his back problem. It further requested for an assessment/disability grading of Rodelas' back problem. Dr. Elpidio Nolasco (Dr. Nolasco) replied in the affirmative and assessed petitioner's back problem as "[s]light rigidity of one third (1/3) loss of motion or lifting power of the trunk (back)" with a Grade 11 disability.^[20]

On September 10, 2014, Dr. Nolasco responded to MST Marine's additional queries on the etiology, risk factors, and plan of management in case Rodelas decides not to undergo surgery:

Regarding your queries:

The etiology and risk factors of patient's medical condition and the plan of management, in the event that Mr. Rodelas will not undergo his recommended procedure.

Etiology is herniated disc.

Risk factors: lifting of heavy weights, heavy upper body

Plan of management: Spine surgery if not, continuous rehabilitation therapy[.]^[21]

Dr. Nolasco reiterated Rodelas' disability grading:

Mr. Rodelas' interim disability grade

Disability grading for back is:

Slight rigidity or one third (113) loss of motion or lifting power of the trunk (back)..... Gr. 11

Reference:

Primer 2010 POEA Standard Employment Contract, Under Chest-Trunk-Spine, page 21. Item #6[.]^[22]

On September 18, 2014, Rodelas went back to Nolasco Medical Clinic where he was referred to the orthopaedic spine surgeon who recommended epidural injections and physical therapy. However, he was unsure of receiving injections.^[23]

On September 24, 2014, Rodelas alleged that he was advised to go to PANDIMAN, his principal's correspondent in the Philippines.^[24] There, he was told of the Grade 11 disability assessment and was offered compensation amounting to US\$14,345.18 as stated in the Collective Bargaining Agreement.^[25] He was allegedly told that to question this assessment, he should "seek a second medical opinion[.]"^[26]

On September 26, 2014, Rodelas sought an opinion from Dr. Renato P. Runas (Dr. Runas), who declared that "spinal surgery will not provide a complete recovery from the symptoms" and that Rodelas was "permanently unfit for sea duty in whatever capacity with a permanent disability."^[27]

Rodelas continued his medical treatment in the Nolasco Medical Clinic. After several sessions, Rodelas was still undecided on whether he will undergo spine surgery or receive epidural injections.^[28]

After his last check-up on October 17, 2014, MST Marine opted to terminate Rodelas' treatment due to his inability to decide on undergoing the recommended course of treatment. MST Marine claimed this was when it informed Rodelas of his disability grading and offered him the amount of US\$14,325.19 as settlement.^[29]

Rodelas rejected the offer and sought the help of his union. On October 22, 2014, AMOSUP sent a letter to MST Marine inviting them for a clarificatory meeting to discuss Rodelas' disability benefits.^[30] However, they failed to arrive at an amicable settlement.^[31]

Thus, on November 10, 2014, Rodelas filed a Notice to Arbitrate with the National Conciliation and Mediation Board.^[32] During the conferences, Rodelas requested for a third medical assessment, but MST Marine did not act on it despite numerous requests for referral. Thus, the parties submitted the case for decision.^[33]

On September 15, 2015, the Panel of Voluntary Arbitrators issued a decision, the dispositive portion of which stated:^[34]

WHEREFORE, PREMISES CONSIDERED, a decision is hereby rendered ORDERING herein respondents MST MARINE SERVICES (PHILS.), INC[.] AND ARTEMIO V. SERAFICO to pay jointly and solidarily complainant ROBERTO RODELAS, JR., the amount of NINETY FIVE THOUSAND NINE HUNDRED FORTY NINE U.S. DOLLARS (\$95,949.00) as permanent total disability benefits; and ten percent (10%) thereof as attorney's fees in the amount of **NINE THOUSAND FIVE HUNDRED NINETY FOUR U.S.**

DOLLARS AND NINETY CENTS (\$9,594.90), or in the total amount of **ONE HUNDRED FIVE THOUSAND FIVE HUNDRED THIRTY NINE AND NINETY CENTS (\$105,539.9[0])**, or its Philippine Peso equivalent converted at the prevailing rate of exchange at the time of actual payment[.]^[35] (Emphasis in the original)

The Panel of Voluntary Arbitrators held that entitlement to permanent total disability benefits does not depend on the assessment of the company-designated physician, but on the capacity of the employee to pursue and earn from his usual work.^[36] Relying on *Crystal Shipping v. Natividad*,^[37] it held that a disability preventing a seafarer from performing and earning from his usual work for more than 120 days leads to permanent total disability. It noted that more than 120 days have lapsed from Rodelas' repatriation on May 24, 2014 until the case was submitted for decision. It also held that Rodelas cannot go back to his sea duties without serious discomfort and danger to his life. Thus, he was awarded permanent total disability benefits amounting to US\$95,949.00 as stipulated in the Collective Bargaining Agreement^[38] and 10% attorney's fees.^[39]

It also gave more weight to Dr. Runas' findings over the company-designated physicians' because it was grounded on the impact of the nature of Rodelas' work in relation to his injury.^[40]

On November 10, 2015, MST Marine filed a petition for review before the Court of Appeals.^[41]

Pending appeal, the Panel of Voluntary Arbitrators granted and issued a writ of execution for the satisfaction of its award. Hence, on February 9, 2016, MST Marine issued an RCBC Check No. 670781 amounting to P5,013,145.25 to NLRC which then released it to Rodelas.^[42]

On February 20, 2018, the Court of Appeals issued a Decision^[43] partially granting the Petition and modifying the award from permanent total to partial disability benefits amounting only to US\$7,465.00:

WHEREFORE, the instant petition for review is hereby **PARTIALLY GRANTED**.

Accordingly, the Decision dated 15 September 2015 rendered by the Panel of Voluntary Arbitrators of the NCMB is **MODIFIED**, ordering petitioner MST Marine Services (Phils.) and Artemio V. Serafico to jointly and severally pay respondent Roberto F. Rodelas, Jr. permanent and partial disability benefits corresponding to a Grade 11 disability under the 2010 POEA-SEC in the amount of US\$7,465.00 or its peso equivalent at the time of payment, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full satisfaction[.]^[44] (Emphasis in the original)

The Court of Appeals found that Rodelas was only entitled to permanent and partial disability benefits.^[45] It held that the period of assessment of the company-designated physician was extended from 120 to 240 days because Rodelas needed further treatment.^[46] Before the lapse of the 240-day period, Rodelas already filed his claims with the National Conciliation and Mediation Board.^[47] It held that

Rodelas' failure to decide on the prescribed treatment prevented the company-designated physician from making a final assessment within the 240-day period.^[48] It ruled that the Grade 11 disability rating is merely an interim assessment that is not definitive of petitioner's condition.^[49] Thus, Rodelas' right to consult with a physician of his own choice was premature because it presupposed the existence of a final assessment of his disability from the company-designated physician.^[50]

Nonetheless, the Court of Appeals held that as a matter of equity, Rodelas was entitled to permanent partial disability benefits, since it is undisputed that his injury was work-related.^[51] It gave credence to the Grade 11 disability rating assessment of the company-designated physician who examined, diagnosed, and treated Rodelas from his medical repatriation.^[52] It modified the rate as provided for in Section 32 of the 2010 POEA Standard Employment Contract (POEA-SEC).^[53]

Finally, the Court of Appeals found that Rodelas was not entitled to attorney's fees as he was neither forced to litigate nor were his wages unlawfully withheld as the delay was caused by his own indecision.^[54]

The Court of Appeals denied Rodelas' motion for reconsideration in its January 14, 2019 Resolution.^[55] Hence, this Petition.

Petitioner does not dispute receiving several consultations and treatments from company-designated physicians. However, he alleges that even after he had signified his intention to undergo surgery he was told by respondent that he can no longer return to his sea duties.^[56] He claims he was advised by respondent to go to its correspondent in the Philippines, PANDIMAN.^[57] There, he learned that he was assessed a Grade 11 disability with a compensation of US\$14,345.18.^[58] He was allegedly told that if he wanted to dispute this assessment, he should seek a second medical opinion.^[59] Thus, he went to Dr. Runas who found him permanently unfit for sea duties, which the respondent refused to acknowledge.^[60] It was then that he sought the help of his union, AMOSUP, to claim his disability benefits.^[61]

Petitioner asserts he sought a second opinion from Dr. Runas to get an improved offer of compensation and possible amicable settlement from the respondent.^[62] Further, he argues that the company-designated physician's assessment was final^[63] and that his medical condition already rendered him totally and permanently disabled by law.

On the other hand, respondent contends that its representative had been diligent in responding to petitioner's medical needs. It faults petitioner for his repeated failure to avail of the prescribed surgery and injections which led to its decision to terminate his medical treatment.^[64] Respondent denies dissuading petitioner from consenting to the surgery and claims even the company-designated physician was consistent in its recommendation to proceed with surgery. Since there was a chance petitioner could regain his full functional capacity after the surgery, respondent asserts petitioner should have consented to the procedure.^[65] It concludes that petitioner's unjustified refusal to undergo surgery disqualifies him from claiming disability benefits under Section 20.D of the POEA-SEC and Article 15.4 of the Collective Bargaining Agreement.^[66]