FIRST DIVISION

[G.R. No. 245858, December 02, 2020]

JOHN A. OSCARES, PETITIONER, VS. MAGSAYSAY MARITIME CORP., SK SHIPPING (SINGAPORE) PTE. LTD., AND/OR ARNOLD B. JAVIER, RESPONDENTS.

D E C I S I O N

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated August 29, 2018 and Resolution[3] dated February 27, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 151822. The CA reversed and set aside the Decision[4] dated March 30, 2017 and Resolution[5] dated July 14, 2017 of the Office of the Panel of Voluntary Arbitrators (Panel) awarding US$131,797.00 as total and permanent disability fees or its equivalent in Philippine Peso at the time of payment, 10% thereof as attorney's fees or its equivalent, and P100,000.00 as moral damages, to petitioner John A. Oscares (Oscares).

Facts of the Case

On August 14, 2015, the Philippine Overseas Employment Administration (POEA) approved the contract of employment between Oscares and respondent SK Shipping (Singapore) Pte. Ltd., through its manning agent respondent Magsaysay Maritime Corporation (respondents). He was certified as fit to work by respondents' examining physician on August 29, 2015. As Second Assistant Engineer on board the vessel MV K. Garnet, he was responsible for the maintenance, operation of engineering, electrical and electronic systems of the vessel.[6]

On November 4, 2015, while the vessel was anchored in Panama, Oscares was singing in front of a videoke machine together with another crew member when he slipped and fell out of balance. As a result, he suffered major knee injuries. First aid was administered to him. On November 11, 2015, he was sent to a medical facility in San Luis Hospital, Mexico. He was diagnosed with fracture fragmentary of the tibia bone epiphysis in the right leg and fracture crack of the tibia bone epyphysis in the left leg. It was recommended that he undergo major knee surgery or osteosintesis-fixation and sterilization. Oscares was declared unfit to work for 10 weeks.[7]

On December 10, 2015, Oscares was repatriated to Manila. Upon arrival, he reported to respondents who referred him to NGC Medical Specialist Clinic, Inc. (NGC) for post-employment medical examination and management.[8] Oscares underwent x-ray of both knees on December 14, 2015. The result revealed that he had complete oblique fracture of the right medical condyle. Thus, he was recommended to undergo major knee surgery. Respondents insisted that Oscares

should shoulder the cost of his surgery. Since his protests fell on deaf ears, he was compelled to undergo the necessary surgery on December 29, 2016. Oscares also shouldered his physical rehabilitation which ensued thereafter. Nonetheless, he was required to report to NGC.[9]

On March 16, 2016, NGC issued an interim disability assessment of Grade 10-complete immobility of a knee joint in full flexion. However, Oscares' attending physician in Seamen's Hospital, Iloilo declared him unfit for duty on April 12, 2016. The removal of his plates was recommended thereafter.[10]

On July 28, 2016, Dr. Nicomedes G. Cruz (Dr. Cruz) issued a final disability assessment of Grade 10 for Oscares. Oscares then sought the opinion of Dr. Manuel Magtira, an orthopaedist, who issued a medical report[11] dated July 12, 2016 recommending permanent disability and considered him permanently unfit in any capacity for further sea duties. Dr. Victor Pundavela (Dr. Pundavela), another doctor consulted by Oscares, issued a medical report[12] on July 14, 2016 likewise stating that he is permanently disabled and unfit for sea duty in any capacity.[13]

Consequently, Oscares sent a demand letter[14] dated July 25, 2016 to respondents for a copy of his final assessment and referral to a third doctor. Since respondents took no action, he filed a notice to arbitrate against them. After mandatory conciliation/mediation, they reached a deadlock.[15]

On July 14, 2017, the Panel ruled that Oscares is entitled to total and permanent disability benefits worth US$131,797.00 based on the Collective Bargaining Agreement (CBA). In addition, it awarded moral damages of P100,000.00 for respondents' gross negligence in its delay in addressing and refusing to shoulder the medical needs of Oscares, as well as for circumventing the provisions of the POEA-Standard Employment Contract (POEA-SEC) and the CBA. The Panel likewise awarded ten percent (10%) of the total award as attorney's fees since he was compelled to incur litigation expenses to protect his rights.[16]

According to the Panel, a work-related injury is one arising out of and in the course of employment. An injury occurs in the course of employment when it takes place within the period of employment, at a place where the employee reasonably may be in the performance of his duties, and while fulfilling those duties or engaged in something incidental thereto.[17] Under the personal comfort doctrine,[18] acts of personal ministration for the comfort or convenience of the employee is an incident of employment. Thus, the Panel held that when Oscares suffered from his injury, he was engaged in an act necessary to his physical well-being and incidental to his employment.[19]

The Panel also found no evidence to show that respondents gave Oscares a copy of his final disability assessment. Moreover, Dr. Cruz was not an expert on Oscares' case since his area of expertise is general and cancer surgery. The Panel was more convinced with the findings of Oscares' attending physician in Seamen's Hospital, Dr. Magtira, and Dr. Pundavela that his disability was total and permanent.[20]

After the Panel denied its motion for reconsideration,[21] respondents filed a petition

for review[22] with the CA. Respondents argued that the Panel erred in applying the personal comfort doctrine since it only covers acts which are related to one's personal comfort for a brief momentary period, such as using the restroom. Oscares' act of singing while jumping is not included, is a purely personal and social function, and is not incidental to his work.[23] Further, Oscares should not have consulted private physicians before respondents' designated physician issued his final assessment. Thus, the former's assessment was premature.[24] Also, Dr. Cruz and NGC's assessment should prevail since they conducted a more adequate, thorough, and exhaustive examination on Oscares. Moreover, Oscares submitted the CBA only after it submitted its position paper. Worse, it is not even the CBA stated in the contract of employment. With respect to the costs of Oscares' treatment, respondents asserted that it presented proof of payment of sickness allowance, medical and transportation reimbursements.[25]

On August 29, 2018, the CA granted the petition and reversed and set aside the decision of the panel of voluntary arbitrators. The CA held that Oscares' injury was not work-related, work-caused, or work-aggravated. It has no connection whatsoever to his official duties. Consequently, it is not compensable.[26]

Oscares filed a motion for reconsideration,[27] but it was denied by the CA. As such, he filed a petition for review on certiorari before Us. *First*, Oscares argues that according to the case of *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*,[28] when the employer pays for the employee's time from the moment that he leaves his home until he returns home, any accidents occurring during the employee's rest and recreation should be considered work-related. Seafarers are being paid from their embarkation on the vessel until their disembarkation. They must stay on board the vessel even during their rest and recreation. Consequently, any injury incurred by seafarers during their rest and recreation should be compensable as long as their actions are not contrary to law or that they intentionally inflicted injury on themselves.[29] *Second*, it is presumed that an injury was directly caused or rose out of the employment or was aggravated by it if it was established through evidence that the injury occurred in the course of employment. Oscares undoubtedly incurred his injury while he was in the course of his employment on the vessel. Hence, the presumption applies.[30] *Third*, respondents' designated physician failed to issue a categorical certification that Oscares was fit to work. The physician also failed to discuss the implication of his disability on his capacity to return to work. In fact, the assessment did not clarify Oscares' medical condition.[31] Due to respondents' failure to issue a final assessment in accordance with the law, Oscares is presumed to have total and permanent disability and is entitled to a Grade 1 disability rating. In any event, Oscares can no longer perform his former duties.[32] *Fourth*, respondents failed to respond to Oscares' offer to refer his case to a third physician. As such, Oscares cannot be faulted for filing the complaint without an opinion from a third doctor.[33] Also, the certification from his chosen physicians should prevail in light of respondents' refusal to respond to Oscares' request to consult a third doctor.[34]

Respondents filed their comment[35] wherein they argue *first*, that Oscares cannot argue for the first time before this Court that his right to due process was violated when respondents' designated physician didn't give him a copy of the final

assessment. Oscares was well-aware of the Grade 10 disability assessment made by the designated physician because this was explained to him on his last medical visit.[36] Also, contrary to Oscares' claim, the POEA-SEC does not require the company-designated physician to discuss the implication of his disability on his capacity to work. Section 20A of the POEA-SEC only requires an assessment of fitness to work or degree of disability and the assessment made by respondents' designated physician complied with this requirement.[37] *Second, Iloilo Dock & Engineering Co.* does not state that rest and recreation forms part of employment.[38] In any event, it is not applicable in this case because the issue here is different. The issue in *Iloilo Dock & Engineering Co.* was the compensability of the death of the employee in relation to his proximity to the workplace when he died. In this case, the issue is whether Oscares' injury incurred during his rest and recreation is compensable.[39] *Third*, respondents insist that Oscares' injury was not work-related. He was not hired to sing on board so it cannot be said that his injury was incidental to his employment. His act of singing while jumping has no relation to his duties as Second Assistant Engineer. It was a purely personal and social function. Therefore, the injury resulting from it is not compensable.[40] *Fourth*, the mere fact that respondents did not rehire Oscares is not conclusive proof of his disability. Oscares did not show that he sought employment elsewhere but was unsuccessful due to his condition. Hence, he has no basis to claim that he has a total and permanent disability.[41] *Fifth*, Oscares failed to comply with the POEA-SEC's requirement that a final assessment must be made by the company-designated physician before it can be disputed through a secondary assessment. Oscares consulted with his chosen physicians on July 12 and 14, 2016, which is before respondents' designated physician issued the final assessment on July 28, 2016, or 227 days after Oscares' repatriation.[42] Respondents even expressed their willingness to consult a third doctor before the Panel.[43] Accordingly, the assessment of respondents' designated physician should prevail over that of Oscares' chosen physicians[44] *Sixth*, the CBA submitted by Oscares is different from the CBA in their contract. As such, he cannot claim benefits under it.[45] He is also not entitled to moral damages and attorney's fees because respondents dutifully complied with their obligations by giving him medical attention prior to the issuance of the final assessment.[46]

Issue

The sole issue before Us is whether the CA erred in setting aside the ruling of the Panel.

Ruling of the Court

We resolve to grant disability compensation to Oscares equivalent to Grade 10 as recommended by respondents' designated physician.

It is well-settled that in order for a seafarer's injury to be compensated, it must be shown that: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[47] A work-related injury is defined as one arising out of and in the course of employment.[48] As for what can be considered in the course of employment, the Court in the case of *Iloilo Dock & Engineering Co.* held that it is when it takes place

within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto. While the case of *Iloilo Dock & Engineering Co.* involves Act No. 3428 or the Workmen's Compensation Act, We have subsequently applied such definition in cases involving seafarers.[49] After all, entitlement to disability benefits by seafarers is a matter governed not only by the contract between the parties but also by Articles 197 to 199, Title II, Book IV of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.[50] In the case of *Phil-Nippon Kyoei, Corp. v. Gudelosao*,[51] We recognized that the death benefits granted under the Labor Code are similar to those granted in the POEA-SEC, such that both are given when the death is due to a work-related cause during the term of the employee's contract.[52] Prior to the Labor Code, the Workmen's Compensation Act is the first law on workmen's compensation in the Philippines for work-related injury, illness, or death.[53] As such, We have also noted that the rule on compensation for work related-injuries of seafarers is analogous to the rule under the Workmen's Compensation Act, that a preliminary link between the illness and the employment must first be shown before the presumption of work-relation can attach.[54]

In the case of *Luzon Stevedoring Corporation v. Workmen's Compensation Commission*,[55] the Court held that "acts reasonably necessary to health and comfort of an employee while at work, such as satisfaction of his thirst, hunger, or other physical demands, or protecting himself from excessive cold, are incidental to the employment and injuries sustained in the performance of such acts are compensable as arising out of and in the course of employment."[56] Similar to Iloilo Dock & Engineering Co., Luzon Stevedoring Corporation also involves Act No. 3428. Even so, we find that its ruling applies here since Act No. 3428, like the POEA-SEC, also makes personal injury from any accident arising out of and in the course of the employment compensable.[57]

In this case, Oscares' act of singing can be considered necessary to his health and comfort while on board the vessel. He incurred his injury while he was performing this act. Oscares neither willfully injured himself nor acted with notorious negligence. Notorious negligence is defined as something more than mere or simple negligence or contributory negligence; it signifies a deliberate act of the employee to disregard his own personal safety.[58] Jumping while singing cannot be considered as a reckless or deliberate act that is unmindful of one's safety. There is nothing inherently dangerous about jumping while singing. Respondents themselves did not allege that Oscares intentionally injured himself or was negligent. The truth is that he simply lost his balance. Accordingly, Oscares' injury is compensable. In fact, no less than respondents' designated physician assessed a disability of Grade 10 for Oscares' injury. Respondents' designated physician initially made this assessment on March 16, 2016, or 91 days after Oscares was repatriated.[59] Afterwards, Oscares continued to receive therapy[60] and consult with the company-designated physician.[61] The final disability assessment was made on July 28, 2016, or 231 days after Oscares' repatriation.[62] Notably, Oscares offered to consult another physician but respondents did not respond to his offer.[63] Respondents claim though that Oscares consulted his own physician even before respondents' designated physician issued the final assessment.[64]