

SECOND DIVISION

[G.R. No. 221117, February 20, 2019]

JEBSENS MARITIME, INC., ABOITIZ JEBSENS BULK TRANSPORT CORPORATION, AND/OR ENRIQUE M. ABOITIZ, PETITIONERS, V. JESSIE D. ALCIBAR, SUBSTITUTED BY MILDRED U. ALCIBAR, RESPONDENT.

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari^[1] assailing the 26 May 2015 Decision^[2] and the 13 October 2015 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 130224.

The Facts

On 5 March 2010, Jebsens Maritime, Inc., on behalf of principal Aboitiz Jebsens Bulk Transport Corporation (petitioners), hired Jessie D. Alcibar (Alcibar) as an ordinary seaman for a period of nine (9) months. Prior to his deployment, Alcibar underwent a comprehensive pre-employment medical examination and was declared physically fit to assume his duties as an ordinary seaman. On 26 March 2010, Alcibar was deployed aboard ocean-going vessel M/V Maritime Victory.^[4] While on board the vessel, Alcibar alleged that most of the meals that were served to him were high in fat and cholesterol. Alcibar alleged that the assigned cook would directly cook chilled meat without waiting for the meat to unfreeze.^[5]

In February 2011, Alcibar felt severe pain in his anal region and noticed blood in his stool. He told the senior officers of the vessel about his condition but according to him he was ignored by the said officers.^[6] Alcibar alleged that his condition worsened because no medicine was given to him by the clinic inside the vessel. Finally, on 16 March 2011, while the vessel was docked in New Westminster, Canada, Alcibar was referred to a medical clinic where he was diagnosed by the doctor on duty with an internal hemorrhoid at the two o'clock position.^[7] After his medical examination, Alcibar still resumed his duties as an ordinary seaman. Alcibar claimed that his condition worsened and he requested to be sent back to the Philippines. However, the officers of the vessel told Alcibar that he could only return to the Philippines once his replacement was available.^[8]

On 5 April 2011, Alcibar was repatriated to the Philippines. In Manila, Alcibar immediately reported his deteriorating health to petitioners. Petitioners, however, told Alcibar that his request for medical assistance must first be approved by management. Petitioners then told Alcibar that they would call him as soon as the request for a post-employment medical examination was approved.^[9] Alcibar then

informed petitioners that he needed to go back to his province to attend the interment of his mother.^[10] Alcibar then flew to Camiguin where his health deteriorated. While in the province, Alcibar claimed he did not receive any phone call from petitioners for his medical examination.

On 7 May 2011, Alcibar went to Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP) Seamen's Hospital in Cebu to have himself physically examined. The private doctor at AMOSUP Seamen's Hospital diagnosed him to have suffered rectal cancer (colon cancer).^[11] On 26 May 2011, Alcibar underwent a Laparoscopic Abdomino-perceanal Resection. Alcibar was confined in AMOSUP Seamen's Hospital from 24 May to 10 June 2011.^[12] Alcibar filed a Complaint^[13] dated 8 September 2011 for permanent disability compensation, sickness allowance, damages, and attorney's fees. Alcibar sought disability compensation and sickness allowance since he claimed that the cause of his illness was the dietary provisions given to him by petitioners while at sea. Alcibar claimed that the dietary provisions on board the vessel increased his risk of contracting colon cancer.

For their defense, petitioners claimed that Alcibar was repatriated because his contract had already expired and not because Alcibar had an illness. According to petitioners, colon cancer is not work-related and is not compensable under the collective bargaining agreement (CBA) because the illness did not result from an accident on board the vessel.^[14]

The Ruling of the Labor Arbiter

In a Decision^[15] dated 15 May 2012, the Labor Arbiter ruled in favor of Alcibar. The Labor Arbiter found that Alcibar's illness was compensable. The Labor Arbiter held that the dietary provisions given to Alcibar while on board the vessel increased the risk of Alcibar of contracting colon cancer. The Labor Arbiter held that there was a strong presumption that Alcibar's colon cancer was work-related and was not existing at the time he boarded the vessel. The Labor Arbiter held that in the determination of the compensability of an illness, reasonable, and not direct, work-connection is sufficient. What matters is that the employee's work had contributed, even in a small degree, to the aggravation of the illness.

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the illness of Complainant to be compensable. Accordingly, Respondents in solidum are hereby ordered to pay the following or in its peso equivalent at the time of payment, to wit:

1. US\$ 89,000.00 - representing permanent total disability benefits pursuant to the CBA;
2. US\$ 1,800.00 - representing 130-day sickness allowance pursuant to the CBA; [and]
3. Attorney's fees of 10% of the total monetary award.

All other claims are dismissed.

SO ORDERED.^[16]

The Ruling of the National Labor Relations Commission

In a Decision^[17] dated 28 December 2012, the National Labor Relations Commission (NLRC) reversed the Decision of the Labor Arbiter. The NLRC held that Alcibar was not entitled to disability compensation because colon cancer could not be considered work-related. The NLRC ruled that there is no showing that colon cancer could have developed within a year Alcibar boarded the vessel of petitioners. Alcibar also did not comply with the requirements of the law because Alcibar was not medically examined within three days after signing off from the vessel. Hence, Alcibar could not file a claim since the company-designated physician's findings form the basis of any disability claim of the seafarer.

The dispositive portion of the NLRC's Decision states:

WHEREFORE, the appeal is hereby granted, the assailed decision of the Labor Arbiter is vacated and set aside, and this case is dismissed for lack of merit.

SO ORDERED.^[18]

Alcibar filed a motion for reconsideration which was denied on 14 March 2013.^[19]

The Ruling of the CA

In a Decision dated 26 May 2015, the CA granted Alcibar's petition for certiorari which reversed the Decision of the NLRC and reinstated the Decision of the Labor Arbiter. The CA held that under prevailing jurisprudence colon cancer is disputably presumed to be work-related. The extended employment of Alcibar coupled with the poor provisions given to Alcibar while at sea by the petitioners aggravated the risk of colon cancer. The CA ruled that Alcibar substantially complied with the requirement of a post-employment medical examination because he immediately reported to the office of petitioners his poor state of health. The CA held that it was petitioners who were grossly negligent because they ignored Alcibar's request for a medical examination when they fully knew that Alcibar had a pre-existing condition while on board the vessel.

The dispositive portion of the CA's Decision states:

WHEREFORE, the petition is GRANTED and the assailed December 28, 2012 Decision of the NLRC is hereby ANNULLED AND SET ASIDE. Accordingly, the May 15, 2012 Decision of the Labor Arbiter is hereby REINSTATED.

SO ORDERED.^[20]

Petitioners filed a Motion for Reconsideration on 23 June 2015 which was denied on 13 October 2015.

Hence, this petition before this Court.

The Issue

Whether Alcibar's illness is compensable.

The Ruling of this Court

We deny the petition. Alcibar is entitled to disability benefits and sickness pay.

First, Alcibar complied with the requirements of the 2000 Philippine Overseas Employment Administration Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA Standard Employment Contract) and the CBA. Alcibar willingly submitted himself to a post-employment medical examination by petitioners' company-designated physician when he arrived in the Philippines. However, it was petitioners which *waived* their right to examine Alcibar since petitioners did not schedule Alcibar for a post-employment medical examination after Alcibar's request upon his repatriation. *Second*, under recent decisions of this Court, colon cancer is a compensable work-related disease. *Third*, that Alcibar's colon cancer is work-related has been established by *substantial evidence*.

Petitioners failed to exercise their right to have Alcibar undergo a post-employment medical examination by their company-designated physician.

Section 20(B) of the POEA Standard Employment Contract requires a post-employment medical examination to prove a seafarer's claim to disability benefits, to wit:

Section 20. Compensation and Benefits

x x x x

B. 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

However, if after repatriation, the seafarer still requires medical attention 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. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

x x x x (Boldfacing and underscoring supplied)

In addition, the CBA executed between Alcibar and petitioners provides for the evidence required to prove entitlement to sickness pay and disability compensation, thus:

Article 26: Sick Pay

26.1 When a seafarer is landed at any port because of sickness or injury, a pro rata payment of their basic wages plus guaranteed or, in the case of officers, fixed overtime, shall continue until they have been repatriated at the Company's expense as specified in Article 23.

x x x x

26.4 Proof of continued entitlement to sick pay shall be by submission of satisfactory medical reports, endorsed, where necessary, by a Company appointed doctor. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be binding on both parties.^[21]

x x x x

Article 28: Disability

28.1 A seafarer who suffers permanent disability as a result of an accident whilst in the employment of the Company regardless of fault, including accidents occurring while traveling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to willful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.

28.2 **The disability suffered by the seafarer shall be determined by a doctor appointed by the Company.** If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.^[22]