

## SECOND DIVISION

[ G.R. No. 223295, March 13, 2019 ]

**FALCON MARITIME AND ALLIED SERVICES, INC., YOKOHAMA MARINE AND MERCHANT CORPORATION, AND/OR FLORIDA Z. JOSE, PETITIONERS, V. ANGELITO B. PANGASIAN, RESPONDENT.**

### DECISION

**J. REYES, JR., J.:**

#### The Facts and the Case

Before this Court is a Petition for Review on *Certiorari* seeking to annul the August 10, 2015 Decision<sup>[1]</sup> and the February 29, 2016 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-GR. SP No. 135163 which affirmed with modification the November 5, 2013 Decision<sup>[3]</sup> and the March 24, 2014 Resolution<sup>[4]</sup> of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board-NCR (Panel) in Case No. AC-949-NCMB-NCR-45-09-06-13, which awarded the respondent his claims for permanent and total disability benefits, moral damages, illness allowance, reimbursement for medical expenses and attorney's fees.

From 2002 to 2012, Falcon Maritime and Allied Services, Inc. (Falcon Maritime), Yokohama Marine and Merchant Corporation (Yokohama), and/or Florida Z. Jose (Jose) [collectively, the petitioners], continuously hired Angelito B. Pangasian (respondent) as Chief Cook under various contracts.<sup>[5]</sup>

After undergoing the requisite pre-employment medical examination on April 13, 2011 and having been declared "*fit for sea duty, without restrictions*,"<sup>[6]</sup> respondent was rehired by the petitioners on July 21, 2011 to resume his former position as Chief Cook on board the reefer ship M/V New Hayatsuki,<sup>[7]</sup> under the following terms and conditions of employment:

- 1.1 Duration of Contract: 9 MONTHS
- 1.2 Position: CHIEF COOK
- 1.3 Basic Pay: US\$599.00
- 1.4 Hours of Work: 40 HOURS PER WEEK
- 1.5 Overtime: Fixed/Closed: US\$ 446.00 (GRTD 103 HRS)
- 1.6 Leave Pay: US\$ 180.00/SBS 54.00
- 1.7 TOTAL:
- 1.8 Point of Hire: MANILA, PHILIPPINES<sup>[8]</sup>

The employment contract was duly approved by the Philippine Overseas Employment Administration (POEA)<sup>[9]</sup> and was covered by the International Bargaining Forum All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines-International Mariners Management Association of Japan Collective Bargaining Agreement (CBA).<sup>[10]</sup>

Respondent left the Philippines and boarded *M/V New Hayatsuki* at the port of Manta, Ecuador on July 23, 2011.<sup>[11]</sup>

Aside from the normal duties of a Chief Cook, respondent alleged that he also helped in the loading and unloading of tons of cargoes of skipjack, tuna fish and big squid from numerous fishing boats in the high seas of the Pacific Ocean and then unloading them at different ports of destinations.<sup>[12]</sup>

On March 15, 2012, while the *M/V New Hayatsuki* was sailing on the Pacific Ocean within the State of Peru in West South America, respondent noticed swelling and felt pain in his testicles after lifting, carrying and loading heavy sacks of big squid into the ship and performing chamber cleaning works. Respondent informed his Chief Officer about this and he was given antibiotics for temporary relief.<sup>[13]</sup>

At around 9:00 p.m. of April 17, 2012, in yet another course of loading heavy sacks full of skipjack, tuna fish and big squid into the ship, respondent averred that he accidentally slipped and lost his balance. Although he felt a crack at his lower back, he did not make much of it given that the pain was tolerable at that time. He continued with his task of loading the cargoes together with the other crew members until the reefer ship was fully loaded and set sail for Bangkok, Thailand where the cargoes will be unloaded.<sup>[14]</sup>

On April 20, 2012, while the reefer ship was en route to Bangkok, Thailand, respondent alleged that the swelling and the pain in his testicles, and his back pains became alarming so he reported the same to his ship master, Captain Isamo Yamamoto (Captain Yamamoto),<sup>[15]</sup> and requested for a referral to a port doctor in Bangkok, Thailand, their next port of call.<sup>[16]</sup>

When they reached the port of Bangkok, Thailand on May 18, 2012, respondent was surprised when the ship captain, instead of referring him to a port doctor, told him that he will be repatriated and that his replacement was already waiting to board the reefer ship. Thus, respondent claimed that he just asked Captain Yamamoto for a medical referral upon his arrival in the Philippines.<sup>[17]</sup>

Respondent left Bangkok, Thailand on May 18, 2012 and arrived in the Philippines on the same day. Without wasting time, he immediately went to Falcon Maritime, the local manning agency, and personally delivered Captain Yamamoto's referral letter to petitioner Jose, who, in turn, referred him to NGC Medical Specialist Clinic, Inc.

On May 21, 2012, respondent was examined by Dr. Paul C. Comising (Dr. Comising), the company-designated physician, and was diagnosed with *varicocoele, bilateral*.<sup>[18]</sup>

On May 22, 2012, he underwent Inguinoscrotal Ultrasound with Color Doppler at the University Physicians Medical Center which revealed he following findings:

IMPRESSION:

1. BILATERAL VARICOCO[E]LE, MORE SEVERE IN THE LEFT[;]
2. EPIDIDYMAL HEAD CYSTS VERSUS SPERMATOCOELES, RIGHT[;]
3. NORMAL ULTRASOUND OF THE TESTES AND LEFT ]EPIDIDYMIS;  
and]

#### 4. UNENLARGED INGUINAL LYMPH NODE, BILATERAL<sup>[19]</sup>

On May 23, 2012, respondent underwent various tests such as CBC, BUN, creatinine, cholesterol, LDL, SGPT, SGOT, urinalysis and abdominal ultrasound, all of which yielded normal results. However, his inguinoscrotal ultrasound showed *varicocoele, bilateral*. Thus, Dr. Comising recommended a procedure called varicocoelectomy, bilateral.<sup>[20]</sup>

On June 26, 2012, respondent underwent varicocoelectomy, bilateral at the Manila Doctor's Hospital.<sup>[21]</sup> The histopathologic diagnosis<sup>[22]</sup> was:

VARICOCOELECTOMY,<sup>[23]</sup> BILATERAL  
VARICOCOELE

Upon his return for evaluation on July 5, 2012, Dr. Comising noted that there was minimal tolerable pain over the operative wounds which were healing well.<sup>[24]</sup> On his follow-up check-up on July 12, 2012, the doctor observed that there was decreasing pain over the operative wounds.<sup>[25]</sup> During his check-up on August 28, 2012, Dr. Comising noted that the pain respondent was feeling in the operative wounds has resolved and the wounds have healed well. As such, respondent was declared fit to work.<sup>[26]</sup>

Doubtful of his fit to work assessment, respondent wrote petitioners, through Jose, immediately the following day informing them that despite his operation and the said assessment, he still continues to feel pain on his surgical wound and experience numbness on the site of operation. He also feels pain on his spine. He, thus, asked that he be reevaluated and Magnetic Resonance Imaging (MRI) be performed on him to determine his present state. He also asked for illness allowance.<sup>[27]</sup>

Since he did not get any response on his requests from the petitioners and anxious to know the real cause of his lower back pains, respondent decided to undergo MRI of his lumbo-sacral spines at the BDM MRI Center, Inc. on September 21, 2012.<sup>[28]</sup> The result of the MRI was:

#### IMPRESSION:

- > DEGENERATIVE DISC DISEASE, L3-L4 AND L4-L5
- > BROAD BASED DISC BULGE WITH AN ANNULAR TEAR AT L4-L5<sup>[29]</sup>

On October 1, 2012, respondent consulted Dr. Omar T. Cortes (Dr. Cortes), Chief of Urology Section, Department of Surgery, Armed Forces of the Philippines Medical Center (AFPMC) for a second opinion. Dr. Cortes interviewed the respondent and studied the medical records and documents he presented which showed that he had *Varicoc[o]ele, Bilateral S/P Varicoc[o]electomy, Bilateral; Broad-based disc bulge with annular tear at level L4-L5; and Degenerative disc disease L3-L4 and L4-L5*. In a Certification dated October 5, 2012, Dr. Cortes opined that the present clinical status and health problem of the respondent may have been brought about by strenuous physical activities and that the condition of his spine poses a serious health problem which requires immediate spine surgical intervention. Respondent's inguinal problem may spontaneously resolve in a year's time. However, pending the

needed surgery, the condition of his spine may worsen and become irreversible, thereby incapacitating him physically permanently.<sup>[30]</sup>

On October 11, 2012, respondent wrote petitioners a follow-up letter to inform them that he was constrained to undergo MRI at his own expense as he did not receive any reply on his first letter request despite the lapse of more than one month from the time it was written. He also asked for further medical assistance, having been advised by his doctor to continue with his physical therapy.<sup>[31]</sup>

On October 12, 2012, respondent went to Dr. Francis Pimentel (Dr. Pimentel), Physical Medicine and Rehabilitation, EMG-NCV, who diagnosed him to be suffering from *herniated nucleus pulposus* (HNP) and recommended that he undergo six sessions of physical therapy.<sup>[32]</sup>

On October 25, 2012, respondent again wrote the petitioners, through Jose, appealing for medical assistance, treatment and reimbursement of the expenses he incurred for his physical therapy, and expressing that such will be of great help inasmuch as he cannot yet resume his work because of his Injuries.<sup>[33]</sup>

On November 9, 2012, respondent was seen again by Dr. Pimentel who noted that he was diagnosed with HNP and advised him to continue with his physical therapy twice a week for another six sessions. <sup>[34]</sup>

On November 29, 2012, St. Dominic Medical Center issued a Physical Therapy Report<sup>[35]</sup> which showed that respondent, who was noted with (+) HNP, (-) DM, (-) CAD, and diagnosed by Dr. Pimentel "*with HNP and complains of intermittent localized dull aching pain on both paralumbers[, with] pain scale 5/10 aggravated upon prolonged standing*" after undergoing 15 physical therapy sessions has shown improvements as follows:

Improvements noted on after 15 PT treatments from Oct. 13, 2012 to Nov. 29, 2012:

1. Decreased pain on (B) paralumbers from pain scale 5/10 to 3/10[;]
2. Increase in (B) trunk rotation by 5°, (B) hip flexion with knee extended by 20° as to active motion[; and]
3. Improved ADL difficulty from moderate to minimal.<sup>[36]</sup>

Inasmuch as respondent was not restored to his previous condition despite having undergone varicocele surgery and numerous sessions of physiotherapy, and as certified by his private physicians that he was already suffering from total and permanent disability, he filed a claim with the petitioners for the payment of his disability benefits based on POEA-Standard Employment Contract (POEA-SEC). Petitioners, however, refused to grant his claim on the ground that the respondent had already been declared fit to work by the company-designated physician.<sup>[37]</sup>

Because petitioners refused his claims, respondent filed a Notice to Arbitrate before the Panel on December 11, 2012.<sup>[38]</sup>

On December 19, 2012, respondent consulted an independent orthopedic specialist, Dr. Manuel Fidel M. Magtira (Dr. Magtira) of the Department of Orthopaedic Surgery & Traumatology, AFPMC for an assessment of his lumbar injury based on the result of his September 21, 2012 MRL In the December 19, 2012 Medical Report<sup>[39]</sup> Dr.

Magtira issued, he opined that respondent "*continues to experience back pain. His back is stiff, making it difficult for him to bend and pick up objects from the floor. He could not lift heavy objects. Sitting or standing for a long time, makes his discomfort worse. He has difficult[y] running, and climbing up or going down the stairs. The demands of a Seaman's work are heavy. [Respondent] has lost his pre[-]injury capacity and is not capable of working at his previous occupation. He is totally and permanently disabled with Grade 1 Impediment based on the POEA contract.*"<sup>[40]</sup>

On November 5, 2013, the Panel rendered a Decision,<sup>[41]</sup> the dispositive portion of which reads as follows:

**WHEREFORE**, respondents are ordered to solidarity pay complainant:

1. Disability Benefit in the amount of **US\$ 60,000.00** or its equivalent amount in Philippine currency, computed at the rate of exchange at the time of payment;
2. Moral damages amounting to US\$3,000.00 or its equivalent amount in local currency;
3. Illness Allowance in the amount of **US\$ 2,595.66** less Php. 36,000.00 and medical expenses reimbursement in the amount of **Php. 7,645.75**.
4. Attorney's fees equivalent to 10% of the total award.

**SO ORDERED.** <sup>[42]</sup>

It held that respondent was in perfect health condition before he boarded petitioners' reefer ship as shown by the result of his pre-employment medical examination. However, prior to his disembarkation, respondent complained of testicular pains, swelling, and lower back pains. The series of medical tests he went through revealed that he was suffering from multiple disabilities, namely:

*Varicoc[o]ele, Bilateral S/P Varicoc[o]lectomy,  
Bilateral Broad-based disc bulge with annular tear at level L4-L5  
Degenerative disc disease L3-L4 and L4-L5*

While working as a Chief Cook for *M/V New Hayatsuki*, respondent performed strenuous physical activities which included the constant lifting, carrying, pushing and pulling of heavy materials and ship provisions. On top of these, he was also tasked to help the other crew members during loading and unloading of heavy sacks full of skipjack, tuna fish and big squid from different fishing boats plying the Pacific Ocean to different ports of unloading destinations. In fact, it was in one of these loading tasks, or on April 17, 2012, that respondent slipped while carrying a heavy sack of big squid, and then felt a crack at his back and pain thereon. On the other hand, *varicocoele* develops over time and worsens when the patient is physically exerting himself, standing or sitting. Prolonged exertion is also more likely to bring pain. The Panel rejected the claim of the petitioners that respondent's back pains is not work-related because he did not complain or mention it even to the company-designated physician when he was getting treated for his *varicocoele, bilateral* since respondent was able to sufficiently explain the absence of any report on his back pains.