

# FIRST DIVISION

[ G.R. No. 225705, April 01, 2019 ]

**MAUNLAD TRANS, INC.; UNITED PHILIPPINE LINES, INC.,  
SEACHEST ASSOCIATES; CARNIVAL CORPORATION; AND/OR  
RONALD MANALIGOD, PETITIONERS, V. ROMEO RODELAS, JR.,  
RESPONDENT.**

## D E C I S I O N

**DEL CASTILLO, J.:**

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> are the April 29, 2015 Decision<sup>[2]</sup> of the Court of Appeals (CA) dismissing the Petition for *Certiorari* in CA-G.R. SP No. 130412, and its July 8, 2016 Resolution<sup>[3]</sup> denying reconsideration of the assailed Decision.

### ***Factual Antecedents***

As found by the CA, the simple facts are, as follows:

[Respondent] was hired by petitioner Seachest, through its manning agent, Maunlad,<sup>[4]</sup> as Galley Steward on-board MV Carnival x x x. After several months, x x x respondent started experiencing seasickness and extreme low back pains. Despite medications administered by the ship's clinic, the pain persisted and extended down to x x x respondent's left thigh. x x x

Subsequently, x x x respondent was repatriated and arrived in the Philippines on 23 January 2010. He reported to petitioner Maunlad, was referred to the Metropolitan Hospital where he underwent physical therapy sessions, among others, and was diagnosed with 'lumbar spondylosis with disc extrusion, L3-L4.' [Respondent] was advised to undergo surgery, spine laminectomy, but did not approve of the same and instead underwent physical therapy sessions. According to x x x respondent, as per petitioners' medical doctors, surgery was not a guarantee on the return of his normal condition, thus, he refused.

On 6 May 2010, x x x respondent returned for a follow-up, and the report on his condition stated:

'x x x

Follow-up case of 28 year old male with Herniated Nucleus Pulposus, L3-L4, Left.

EMG-NCV Study - chronic left L5 – S1 radiculopathy

Not keen on surgery.

Continue rehabilitation.

His suggested disability grading is Grade 8 - 2/3 loss of

motion or lifting power of the trunk.  
To come back after 3 weeks.

x x x'

As x x x respondent's condition did not improve for purposes of resuming his regular duties as a seafarer, he filed a Complaint on 14 May 2010 for total and permanent disability, reimbursement of medical and transportation expenses, damages, attorney's fees and legal interest against petitioners.

Petitioners, in their Position Paper, insisted that x x x respondent is only entitled to a Grade 8 disability assessment as found by the company physician, with the equivalent monetary benefits of x x x (US\$16,795.00), which they offered but was refused.

The Labor Arbiter rendered a Decision on 22 June 2012 ruling that: 1) the assessment of the company-designated physician giving a Grade 8 disability rating was premature, made only to comply with the 120-day period as mandated in the POEA Contract; and 2) the work-related disability incurred by x x x respondent prevented him from seeking employment and thus, he was entitled to the payment of permanent disability benefits. The dispositive portion of the said Decision states:

'x x x

WHEREFORE, premises considered, judgment is hereby rendered ordering [petitioners] Maunlad Trans[,] Inc./Seachest Associates/Carnival Corporation to pay [respondent] Romeo Rodelas, Jr., jointly and severally the amount of SIXTY SIX THOUSAND US DOLLARS (US\$66,000.00) xxx representing his total permanent disability and attorney's fees.

x x x x

All other claims are DISMISSED for lack of merit.

SO ORDERED.

x x x x'

Petitioners appealed the said Decision to the NLRC. However, the NLRC affirmed the findings of the Labor Arbiter in its first assailed Resolution dated 21 February 2013:

x x x x

Petitioners filed a Motion for Reconsideration but the same was likewise denied by the NLRC in its second assailed Resolution dated 27 March 2013 x x x<sup>[5]</sup>

### ***Ruling of the Court of Appeals***

Petitioners filed a Petition for *Certiorari* before the CA, which rendered the herein assailed Decision containing the following pronouncement:

While it is true that the mandated x x x (120) and x x x (240) days have not yet elapsed when x x x respondent filed his Complaint, We agree with both the Labor Arbiter and the NLRC that inasmuch as x x x respondent was advised to 'come back' three (3) weeks from 06 May 2010, this left his alleged continued medical rehabilitation open-ended. Likewise, We cannot agree with petitioners' argument that the Grade 8 disability rating is deemed final just because x x x respondent was not keen to undergo surgery. After all, the medical report itself belies this claim as it is stated therein that the Grade 8 assessment is merely a 'suggested' grading. Regardless of whether or not x x x respondent returned to be re-assessed by the company-designated physician three (3) weeks from 06 May 2010, the x x x (120)-day period would have lapsed without x x x respondent being issued either a final and definitive disability assessment or a fit-to-work certification. As held in *Kestrel vs. Munar*, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the periods provided. And that failure to do so and should the seafarer's medical condition remains unresolved, the employee shall be deemed totally or permanently disabled.

Even if We construe the suggested disability assessment on x x x respondent as final and definite, it has remained undisputed that x xx respondent, up to this day, is still unable to perform, and has not resumed, his regular sea duties. x x x **Thus, if an employee is still unable to resume his regular sea duties after the lapse of x x x (120) days or x x x (240) days, as the case may be, the injury is deemed to be total and permanent.**

x x x x

[Respondent, while at the prime age of 29, was not rehired by the petitioners precisely because the loss of 2/3 of the lifting power of x x x respondent's trunk incapacitated him to resume his occupation as a seaman. Even a surgery, as suggested by petitioners' medical doctors, was not a guarantee for him to be able to return to his work. As observed by the NLRC, x x x respondent, as a galley steward, is responsible for preparing, cooking and serving meals to passengers as well as setting tables and buffet lines requiring him to constantly stand, walk, bend and lift objects. And poor trunk disability would seriously affect the performance of his duties. x x x

x x x x

It may also be noted that xxx respondent did not consult a doctor of his choice to assail the disability grading issued by the company-designated physician pursuant to Section 20(B), paragraph 3 of the POEA-SEC x x x

x x x x

This requirement, however, is unnecessary if the seafarer remained unable to perform his customary work beyond the two hundred forty (240)-day period, as in the present case before Us. The same is in accordance with the pronouncement of the Supreme Court in *Sealanes*

Marine Services, Inc. vs. Dela Torre, a recent case promulgated in February 2015.

Finally, as to petitioners' arguments that only a Grade 1 disability under Section 32, Philippine Overseas Employment Administration Standard Employment Contract merits a total and permanent disability benefits and that there is no unfitness-to-work clause therein, the same must likewise fail. While there is no question that only a Grade 8 rating was suggested by the company-designated physician, and not a Grade 1 rating which would merit the payment of the full sixty thousand US dollars xxx total and permanent disability benefits, the POEA SEC provides merely for the basic or minimal acceptable terms of a seafarer's employment contract. Thus:

'x x x

**x x x in the assessment of whether his injury is partial and permanent, the same must be so characterized not only under the Schedule of Disabilities in Section 32 of the POEA SEC, but also under the relevant provisions of the Labor Code and the AREC implementing Title II, Book IV of the Labor Code.** According to Kestrel, while the seafarer is partially injured or disabled, he must not be precluded from earning doing [sic] the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, **if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as may be the case, then he shall be deemed totally and permanently disabled.**

x x x'

x x x x

We take note, too, that petitioners already paid the judgment award rendered by the labor tribunals in the total amount of sixty-six thousand US dollars (US\$66,000.00) on 17 September 2013, based on the Conditional Satisfaction of Judgment with Urgent Motion to Cancel Bond All Without Prejudice to the Pending Petition for *Certiorari* in the Court of Appeals and that x x x respondent duly received the same.

All told, both the NLRC and the Labor Arbiter ruled on the issues based on the relevant laws and jurisprudence, and supported by substantial evidence. A perusal of the challenged Decision and Resolution of the NLRC fail to illustrate that they were rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

x x x x

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby DISMISSED. Accordingly, the assailed Decision dated 21 February 2013 and Resolution dated 27 March 2013 stand.

SO ORDERED.<sup>[6]</sup>

The CA essentially held that the company-designated physician failed to arrive at a definite assessment of respondent's fitness or disability within the 120/240-day periods provided under the law; that the company-designated physician's last report on respondent's condition which "suggested" a disability grading of "Grade 8 - 2/3 loss of motion or lifting power of the trunk" is not a final or definite assessment of his fitness or disability because respondent was still required to return after three weeks for further examination; that regardless of the fact that respondent was required to return for further examination, the statutory 120/240-day periods would have elapsed without respondent being issued either a final and definitive disability assessment or a fit-to-work certification; that respondent's condition would not have improved even with the prescribed surgery, which he refused to undergo, because as admitted by the company-designated physician it did not guarantee improvement of respondent's condition; that to this day, respondent is still unable to resume his regular sea duties, his inability to find work continues, and he was not re-employed by petitioners; and that with the lapse of the statutory 120/240-day periods without respondent having gone back to work, he is deemed totally and permanently disabled.

Petitioners moved to reconsider but the CA stood its ground. Hence, the present Petition.

### **Issues**

Petitioners submit that -

- I. The Honorable Court of Appeals erred in holding [petitioners liable for US\$60,000.00 representing total and permanent disability benefits.
- II. The Honorable Court of Appeals committed serious and reversible error of law and fact in holding that [petitioners are liable for attorney's fees considering that the [petitioners never acted with bad faith in dealing with [r]espondent.<sup>[7]</sup>

### ***Petitioners' Arguments***

Petitioners maintain in their Petition and Reply<sup>[8]</sup> that the CA committed serious and palpable error and grave abuse of discretion in arriving at a finding of total and permanent disability in favor of respondent, since compensability does not depend on loss of earning capacity or the number of days that respondent is unable to work; that the CA erred in disregarding the Grade 8 assessment of the company-designated physician, which should prevail as against its finding of total and permanent disability; that the CA erred in concluding that a definite medical assessment as to respondent's condition was not issued within the statutory 120/240-day periods; that the CA erred in declaring that petitioners are guilty of bad faith in dealing with respondent; and that respondent is not entitled to attorney's fees.

### ***Respondent's Arguments***

In his Comment,<sup>[9]</sup> respondent counters that his injury was total and permanent as his condition has not healed to this day, and he has to continue his medication and therapy; that the company-designated physician failed to issue a definite assessment of his condition and has not issued a fit-to-work certificate to this day;