

## THIRD DIVISION

[ G.R. No. 213482, June 26, 2019 ]

**GEORGE M. TOQUERO, PETITIONER, VS. CROSSWORLD MARINE SERVICES, INC., KAPAL CYPRUS, LTD., AND ARNOLD U. MENDOZA, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

Disability ratings should be adequately established in a conclusive medical assessment by a company-designated physician. To be conclusive, a medical assessment must be complete and definite to reflect the seafarer's true condition and give the correct corresponding disability benefits.<sup>[1]</sup>

This Court resolves a Petition for Review on Certiorari<sup>[2]</sup> assailing the April 16, 2014 Decision<sup>[3]</sup> and July 17, 2014 Resolution<sup>[4]</sup> of the Court of Appeals in CA-G.R. SP No. 132195. The Court of Appeals ruled that George M. Toquero's (Toquero) injury is not compensable under the Collective Bargaining Agreement and the Philippine Overseas Employment Administration Standard Employment Contract (POEA Standard Employment Contract).

On January 16, 2012, Toquero was employed by Crossworld Marine Services, Inc. (Crossworld) on behalf of its principal, Kapal Cyprus, Ltd., as a fitter for vessel MV AS VICTORIA.<sup>[5]</sup> His employment had the following terms and conditions:

Duration of contract	: 07 Months (+/-1)
Position	: FITTER
Basic Monthly Salary	: USD 774.00
Hours of Work	: 40hrs/week
Guaranteed Overtime	: USD 576.00 in excess of 103 [hours] at USD 5.59
Leave Pay	: USD 206.00
Subsistence Allowance	: USD 152.00
Monthly Bonus	: USD 31.00
Total	: USD 1,739.00
Point of Hire	: MANILA, PHILIPPINES
CBA	: IMEC-CBA <sup>[6]</sup>
Reference	

No.

On January 12, 2012, Toquero underwent a pre-employment medical examination and was declared fit for sea duty. He was deployed on January 23, 2012.<sup>[7]</sup>

On April 24, 2012, while on board the vessel, Toquero was assaulted by his fellow seafarer, Jamesy Fong (Fong).<sup>[8]</sup>

According to Toquero, he was instructed by the master of vessel to check and repair a generator. Fong, who was an oiler, was ordered to assist him.<sup>[9]</sup>

While Fong was removing both the generator's cover lube oil pump and the flanges from the flexible rope, Toquero advised him not to remove the flanges because the problem was in the generator.<sup>[10]</sup>

This irked Fong, who complained that Toquero had no right to give him orders. Fong recalled their prior altercation and challenged Toquero to a fistfight. Toquero ignored Fong and continued working.<sup>[11]</sup>

Suddenly, Fong hit the back of Toquero's head with a big and heavy metal spanner, knocking him unconscious. He was given first aid treatment at the ship clinic, where his vital signs were monitored. Meanwhile, Fong was jailed in the immigration office and was scheduled for repatriation.<sup>[12]</sup>

Toquero was later hospitalized in Lome, Togo, Africa, where he was evaluated by a neurosurgeon, Dr. Tchamba Bambou. The Medical Certificate "noted a large lacerated wound with a large depression on the left parietal area."<sup>[13]</sup> Toquero underwent urgent craniectomy, debridement, and evacuation of hematoma, which left a hole in his skull. He was discharged from the hospital on May 10, 2012.<sup>[14]</sup>

On May 14, 2012, Toquero was repatriated to the Philippines.<sup>[15]</sup> He was then referred to the company-designated physician, Dr. Fe A. Bacungan (Dr. Bacungan), who concluded that his frequent headaches and dizziness were due to the jarring of the brain.<sup>[16]</sup>

Dr. Bacungan, the vice president and medical director of S.M. Lazo Medical Clinic, Inc., Crossworld's healthcare provider, recommended an electroencephalography for Toquero. She wrote:

At the clinic, he was examined by one of our doctors and physical examination findings showed a scar and depression on the left parietal area.

Initial Impression: Status-Post Craniotomy, Left Parietal area, with residual Paresthesia of the C1-C4; Depressed Skull, Left Parietal

Last May 23, 2012, Eng. Fitter Tuquero was referred to our Neurologist, Dr. Epifania Collantes and was again examined. Diagnosis given: Status-Post Head Trauma Secondary to Mauling with Depressed Skull, Left Parietal Area.

. . . .

#### Recommendation:

1. To undergo EEG (Electro-Encephalogram).<sup>[17]</sup>

On June 11, 2012, Toquero underwent a routine electroencephalography conducted by Dr. Benilda C. Sanchez-Gan, an epileptologist.<sup>[18]</sup> The Medical Report indicated:

#### TECHNICAL DESCRIPTION:

. . . .

Photic stimulation and hyperventilation had no effect. No focal abnormality or epileptiform activity was present. Simultaneous single lead EKG showed irregular heart rate of 66-72/minute.

#### IMPRESSION:

This is a normal awake, drowsy and sleep EEG recording.<sup>[19]</sup>

Toquero requested that a metal plate be implanted in his skull to cover the hole in it, since only his scalp and hair protected his brain from further injury. The company-designated physician assured him that they would make the proper request, but to no avail.<sup>[20]</sup>

Alarmed by his physical condition, Toquero consulted his chosen physicians, Dr. Leonardo R. Pascual (Dr. Pascual) and Dr. Renato P. Runas (Dr. Runas).<sup>[21]</sup>

Dr. Pascual assessed that Toquero's physical discomfort was due to trauma and skull defect. Dr. Runas declared Toquero "permanently unfit to return to work as a seaman in any capacity"<sup>[22]</sup> and diagnosed him with a total and permanent disability. Dr. Runas' Medical Evaluation Report read:

Seaman Toquero became incapacitated because of the serious head injury that he incurred on board. He has frequent headache and dizziness as a result of severe jarring of the brain. The physiological state of the brain has been altered by the injury. Numbness of the face and scalp is also a permanent manifestation of the injury. **He has a large bone defect which may pose further damage to his brain.** Contusion of the brain tissue also occurred at the site of the **skull fracture.** Permanent physiological and functional damage may not be apparent initially but will gradually and progressively develop later. At this time, he is no longer allowed to engage in heavy physical activities. The ship's environment is also dangerous to him because of the unsteady state of the vessel when sailing at high seas. Dizziness may set anytime and may result to fall, which may cause further irreparable injury. Because of the impediment, **he is permanently unfit to return to work as a seaman in any capacity and considered for total permanent disability.**<sup>[23]</sup>  
(Emphasis in the original)

Toquero then asked Crossworld for his sickness allowance, but this was rejected.<sup>[24]</sup>

On June 18, 2012, Toquero was declared by the company-designated physician as fit to go back to work. However, he only learned about this much later, after he had filed on June 25, 2012 a Complaint against Crossworld for sickness allowance, money claims, moral and exemplary damages, and attorney's fees.<sup>[25]</sup>

After having learned during the conciliation conference that the company-designated physician had declared him fit for sea duty, he accordingly amended his Complaint to include a claim for total permanent disability benefits.<sup>[26]</sup>

As an officer with a rating of an above Able-Bodied Seaman, Toquero prayed for US\$250,000.00 as total disability benefits under the Collective Bargaining Agreement covered by the Vereinte Dienstleistungsgewerkschaft (Ver Di Agreement).<sup>[27]</sup> Section 19 stated:

A seafarer who suffers injury as a result of an incident from any cause whatsoever while in the employment of the Managers/Owners, including accidents occurring while travelling to or from the ship or as a result of marine or other similar peril, and whose ability to work is reduced as a result thereof, shall receive from the Managers/Owners, in addition to his/her sick pay compensation as stated below: Compensation:

- a) Masters and Officers and ratings above AB - US\$250,000
- b) All ratings AB and below - US\$125,000

Loss of Profession caused by disability (accident) shall be secured by 100% of the compensation.<sup>[28]</sup>

On January 31, 2013, the Labor Arbiter rendered a Decision<sup>[29]</sup> dismissing the Complaint for lack of merit. However, since Toquero was injured while working on board, it ruled that Toquero was entitled to the award of US\$5,000.00 in the interest of justice and equity and for humanitarian considerations.<sup>[30]</sup> The dispositive portion of the Decision read:

WHEREFORE, premises considered, the complaint is hereby dismissed for lack of merit.

Respondents are held solidarity liable to pay complainant his monetary award as specified above.

SO ORDERED.<sup>[31]</sup>

On appeal, the National Labor Relations Commission, in its June 14, 2013 Decision,<sup>[32]</sup> modified the Labor Arbiter's Decision. It vacated and set aside the US\$5,000.00 award, but ordered Crossworld to pay Toquero sickness allowance and attorney's fees equivalent to 10% of the judgment award.<sup>[33]</sup> The dispositive portion of its Decision read:

WHEREFORE, all of the foregoing premises considered, judgment is hereby rendered finding partial merit in the instant appeal; the appealed

Decision is hereby MODIFIED in that Respondents are hereby ordered to pay Complainant sickness allowance, and attorney's fees equivalent to ten percent (10%) of the judgment award.

The award of US\$ 5,000.00 is hereby VACATED or SET-ASIDE.

So Ordered.<sup>[34]</sup>

The National Labor Relations Commission found that Toquero's injury was work-related because the master of vessel directed Toquero and Fong to work together despite knowing their previous altercation. Despite this, it ruled that Toquero's injury was not compensable because it resulted from a criminal assault, which was not an accident. It also did not give weight to the findings of Toquero's chosen physicians as they were not supported by medical examinations.<sup>[35]</sup>

Toquero filed a Motion for Partial Reconsideration, but this was denied. Thus, he filed before the Court of Appeals a Petition for Certiorari.<sup>[36]</sup>

In its April 16, 2014 Decision,<sup>[37]</sup> the Court of Appeals dismissed the Petition. It upheld the findings of the company-designated physician who regularly monitored and treated Toquero.<sup>[38]</sup> Akin to the National Labor Relations Commission, it found that while the injury suffered by Toquero was work-related, it cannot be classified as an accident because it resulted from his co-worker's criminal assault.<sup>[39]</sup> It ruled that Toquero should have expected the attack because of his previous quarrel with Fong.<sup>[40]</sup>

Nevertheless, the Court of Appeals reinstated the award of US\$5,000.00 in the interest of justice and equity and for humanitarian considerations.<sup>[41]</sup> The dispositive portion of its Decision read:

**WHEREFORE**, the instant Petition is hereby **DENIED**. The assailed June 14, 2013 Decision and July 31, 2013 Resolution of the National Labor Relations Commission (Second Division) in NLRC LAC No. 04-000343-13 (NLRC-OFW Case No. 06-09574-12) are **AFFIRMED** with the only **MODIFICATION** that We award the sum of US\$5,000.00 in favor of Toquero for his further medical treatment. We, however, affirm in all other aspects.

**SO ORDERED.**<sup>[42]</sup> (Emphasis in the original)

Toquero filed a Motion for Reconsideration, but this was denied in the Court of Appeals' July 17, 2014 Resolution.<sup>[43]</sup>

Hence, on August 8, 2014, Toquero filed this Petition for Review on Certiorari.<sup>[44]</sup>

In its November 12, 2014 Resolution,<sup>[45]</sup> this Court required respondents to comment on the Petition and petitioner to submit the proof of service and verified statement of the material date of filing.

On January 13, 2015, respondents filed their Comment.<sup>[46]</sup> On January 26, 2015,