SECOND DIVISION

[G.R. No. 240614, June 10, 2019]

DANILLE G. AMPO-ON, PETITIONER, VS. REINIER* PACIFIC INTERNATIONAL SHIPPING, INC. AND/OR NEPTUNE SHIPMANAGEMENT SERVICES PTE./NOL LINER (PTE.), LTD.,** RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 28, 2018 and the Resolution[3] dated July 10, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 144437 which set aside the Decision[4] dated October 1, 2015 and the Resolution[5] dated January 7, 2016 of the National Conciliation and Mediation Board (NCMB) in MVA-093-RCMB-NCR-MVA-042-05-05-2015, granting petitioner Danille G. Ampo-on's (petitioner) claim for total and permanent disability benefits in accordance with the Singapore Organisation of Seamen - Neptune Shipmanagement Services, Pte., Ltd. Collective Bargaining Agreement[6] (CBA) in the amount of US$120,000.00, as well as ten percent (10%) attorney's fees.

The Facts

On February 11, 2014, petitioner was employed as an Able Seaman by respondent Reinier Pacific International Shipping, Inc. for and on behalf of its principal Neptune Shipmanagement Services Pte./NOL Liner (Pte.), Ltd.[7] (respondents), on board M/V APL Barcelona, under an eight (8)-month contract,[8] with a basic monthly salary of US$671.00, exclusive of overtime pay and other benefits. After undergoing the required pre-employment medical examination (PEME),[9] petitioner was declared fit for sea duty, and thus, boarded the vessel.[10]

On October 18, 2014, while doing sanding works, petitioner heard a snap and crunching sound in his back followed by tremendous pain. Upon reaching the port of Taiwan on October 20, 2014, petitioner was sent to the hospital, where he was initially diagnosed to be suffering from L3-L4 Spondylolisthesis and L3 Pars Fracture.[11] Consequently, he was repatriated on October 23, 2014 and referred to the company-designated physician, who performed several tests on him, advised him to undergo physical therapy, and even suggested back surgery.[12]

Eventually, on February 6, 2015, the company-designated physician issued a medical report,[13] stating, inter alia, that "[f]itness to work is unlikely to be given within his 120 days of treatment" and that "[i]f patient is entitled to disability, his suggested disability grading is Grade 8 - loss of 2/3 lifting power of the trunk," *viz.*:

> Based on the patient's present status, his prognosis is guarded.
>
> The specialist recommends surgery with Transforaminal Lumbar Interbody Fusion. However, the patient has refused the surgery. Without the surgery, he has already reached maximum medical improvement.
>
> **Fitness to work is unlikely to be given within his 120 days of treatment.**
>
> **If patient is entitled to disability, his suggested disability grading is Grade 8 - loss of 2/3 lifting power of the trunk.**[14]

On March 25, 2015, petitioner consulted his independent physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira) who observed[15] that the former was permanently disabled and unfit to work.[16]

Thus, claiming that his condition rendered him incapacitated to work as a seafarer for more than 120 days, petitioner filed a complaint[17] against respondents before the NCMB for the payment of total and permanent disability benefits in the amount of US$120,000.00 as per the CBA, moral, exemplary, and compensatory damages, and attorney's fees.[18]

For their part, respondents denied petitioner's monetary claims, contending that petitioner's condition was not work-related and was not an accidental injury, but merely a manifestation of an illness, which was not compensable under the Philippine Overseas Employment Administration - Standard Employment Contract (POEA-SEC) or the CBA. Moreover, respondents pointed out that petitioner committed notorious negligence, since the latter refused surgery as suggested by the company-designated physician, despite the fact that the expenses thereof would be shouldered by the former.[19]

The NCMB's Ruling

In a Decision[20] dated October 1, 2015, the NCMB ruled in favor of petitioner, and accordingly, ordered respondents to jointly and severally pay him: (a) US$120,000.00, or its peso equivalent, as maximum disability compensation pursuant to the CBA; and (b) 10% attorney's fees.[21]

It held that petitioner's back injury was sustained in the course of performing his duties as an Able Seaman while exerting force with his upper extremities and hence, work-related. Besides, the company-designated physician failed to issue a report or opinion to the effect that the medical condition was not work-related.[22]

Moreover, the NCMB observed that the event so described, wherein petitioner suffered tremendous pain immediately when he heard a snap and crunching sound on his back during exertion, falls within the definition of accidental injury.[23] On this score, it further noted that page three (3) of the October 21, 2014 Medical Report Form - which appears to have been suppressed by respondents as the same was not included in its evidence - discloses that the certifying doctor encircled the text "Yes" [24] in response to the question "Is the illness due to an accident."[25] Hence, the

NCMB concluded that petitioner is entitled to maximum disability compensation pursuant to the CBA.[26]

Dissatisfied, respondents moved for reconsideration[27] but were denied in a Resolution[28] dated January 7, 2016; hence, the matter was elevated[29] to the CA.

The CA's Ruling

In a Decision[30] dated March 28, 2018, the CA set aside the NCMB's ruling and held that petitioner was only entitled to Grade 8 disability benefits under the POEA-SEC.[31]

Essentially, the CA gave more credence to the findings of the company-designated physician that petitioners' disability was "Grade 8 - loss of 2/3 lifting power of the trunk"[32] considering that its assessment contained in the February 6, 2015 medical report was arrived at after examining petitioner thoroughly, and after requiring him to undergo a series of medical tests, physical therapy, and medication, as evidenced by six (6) medical reports. On the other hand, the conclusion of petitioner's independent physician, Dr. Magtira, that petitioner was unfit for sea duty, was made without proof of the medical procedures, examinations, or tests, which would form the basis thereof.[33]

Undaunted, petitioner moved for reconsideration[34] but was denied in a Resolution[35] dated July 10, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in ruling that petitioner is entitled to only Grade 8 disability benefits under the POEA-SEC.

The Court's Ruling

The petition is meritorious.

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, the parties' contracts, and the medical findings. The relevant statutory provisions are Articles 197 to 199[36] (formerly Articles 191 to 193) of the Labor Code, in relation to Section 2 (a),[37] Rule X of the Amended Rules on Employees' Compensation, whereas the material contracts are the POEA-SEC and the parties' CBA, if any.

I.

Pursuant to the 2010 POEA-SEC, which applies to this case, the employer is liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract.[38] In this regard, work-related injury is defined as an injury arising out of and in the course of employment.[39]

Upon finding that the seafarer suffers a work-related injury or illness, the employer

is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation.[40] This period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists.[41]

The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report.[42] To be conclusive and to give proper disability benefits to the seafarer, this assessment must be **complete and definite**;[43] otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored.[44] As case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such.[45]

Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.[46]

In this case, records reveal that petitioner sustained a back injury while doing sanding works as an Able Seaman during his employment on board respondents' vessel.[47] For respondents' part, there appears to be no categorical assessment from the company-designated physician that petitioner's injury was not work-related, as the former even suggested a partial disability grading.[48] Clearly, these facts negate respondents' claim that the injury did not arise out of and in the course of employment, and hence, must be deemed work-related.

Moreover, while the company-designated physician's assessment[49] was issued within the 120-day period, which was on February 6, 2015 or 106 days after petitioner's repatriation, it could not have been a final and definite assessment as mandated by law, considering the language of the assessment showing that the disability grading was merely **interim**, as it was declared that "**prognosis is guarded**" and "**[i]f** patient is entitled to a disability, his suggested disability grading is Grade 8 - loss of 2/3 lifting power of the trunk." Notably, the company-designated physician even informed petitioner that "**[f]itness to work is unlikely** to be given **within his 120 days** of treatment." The medical report reads:

> Based on the patient's present status, his **prognosis is guarded**.
>
> The specialist recommends surgery with Transforaminal Lumbar Interbody Fusion. However, the patient has refused the surgery. Without the surgery, he has already reached maximum medical improvement.
>
> **Fitness to work is unlikely to be given within his 120 days of treatment.**

If patient is entitled to disability, his **suggested disability grading** is Grade 8 - loss of 2/3 lifting power of the trunk.[50]

Consequently, the company-designated physician's assessment should not prevail and must be completely disregarded, since it was merely an "interim" assessment. Being an interim disability grading, the declaration was merely an initial prognosis of petitioner's condition for the time being, which does not fully assess his condition and cannot provide sufficient basis for an award of disability benefits in his favor.[51] Moreover, notwithstanding such interim assessment and declaration of unfitness to work, the company-designated physician failed to indicate the need for further treatment/rehabilitation or medication, and provide an estimated period of treatment to justify the extension of the 120-day period. Evidently, without the required final and definite assessment declaring petitioner fit to resume work or the degree of his disability, the characterization of the latter's condition after the lapse of the 120-day period as total and permanent ensued by operation of law.[52]

Besides, petitioner's injury persisted despite the company designated-physician's declaration of partial disability Grade 8. Thus, applying Article 198 (c) (1) of the Labor Code, petitioner's disability should be deemed total and permanent. In this regard, it must be emphasized that in the determination of whether a disability, is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the injuries he sustained. **A permanent partial disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period** despite the injuries sustained, and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.[53] Total disability does not require that the employee be completely disabled or totally paralyzed. In disability compensation, it is not the injury which is compensated, but it is the incapacity to work resulting in the impairment of one's earning capacity.[54]

Corollarily, the compliance with the third-doctor referral provision of the 2010 POEA-SEC is rendered inapplicable, considering that absent a final assessment from the company-designated physician, the seafarer has nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.[55]

Neither can the Court subscribe to respondents' claim that petitioner's refusal to undergo surgery can be considered as notorious negligence that would bar the latter from claiming compensation. Notorious negligence has been 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.[56] Here, there is no showing that the latter was informed that surgery was the sole remedy to address his back injury nor warned of the effect of his choice of physical therapy.

Given the foregoing circumstances, the Court finds that the NCMB did not gravely abuse its discretion in holding that petitioner is deemed permanently and totally disabled and should be entitled to the corresponding disability benefits.

II.

As to the amount of petitioner's entitlement, Article 25 (1) of the CBA provides that