

THIRD DIVISION

[G.R. No. 225899, July 10, 2019]

JESSIE C. ESTEVA, PETITIONER, V. WILHELMSSEN SMITH BELL MANNING, INC. AND WILHELMSSEN SHIP MANAGEMENT AND/OR FAUSTO R. PREYSLER, JR., RESPONDENTS.

DECISION

LEONEN, J.:

When a company-designated physician fails to arrive at a final and definite assessment of a seafarer's fitness to work or level of disability within the prescribed periods, a presumption arises that the seafarer's disability is total and permanent.^[1]

This Court resolves a Petition for Review on Certiorari^[2] assailing the Court of Appeals March 22, 2016 Decision^[3] and July 19, 2016 Resolution^[4] in CA-G.R. SP No. 137635. The Court of Appeals found that Jessie C. Esteva (Esteva) was not entitled to the payment of total and permanent disability benefits.

On January 26, 2012, Wilhelmsen Smith Bell Manning, Inc. (Smith Bell Manning), on behalf of its principal, Wilhelmsen Ship Management, hired Esteva as a seafarer for nine (9) months, with a basic monthly salary of US\$675.00.^[5]

Esteva was deployed on April 15, 2012.^[6] He underwent the prescribed medical examination and was pronounced fit to work. On April 16, 2012, he boarded the vessel Ikan Bagang.^[7]

Sometime in June 2012, while he was onboard the vessel, Esteva began to suffer severe back pains. As the vessel arrived in China on June 20, 2012, he asked the Indian Master to refer him to a physician because the back pains were getting worse.^[8]

On June 24, 2012, Esteva went to a small clinic where he underwent x-ray and was given oral and topical pain relievers.^[9]

On October 5, 2012, while the vessel was at Richards Bay, South Africa, Esteva was diagnosed by Dr. W. Watson (Dr. Watson) with lumbar disc prolapse. According to the Injury/Illness Report, his condition required a specialist treatment and possible operation. Dr. Watson declared Esteva to have a temporary total disability and unfit for work. The physician further recommended that Esteva undergo immediate repatriation. Wilhelmsen Ship Management also wrote a letter requesting that Esteva be examined by the company-designated physician in the Philippines.^[10]

On October 7, 2012, Esteva returned to the Philippines and reported to his employer. He was then referred to the Metropolitan Medical Center, where he

underwent several medical examinations. His x-ray results revealed that he had osteodegenerative changes in his lumbar spine.^[11]

On April 3, 2013, the company-designated physician, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon), issued a Medical Certificate indicating that Esteva was given medications for Pott's disease, a form of tuberculosis of the spine. She prescribed that Esteva take at least one (1) year of treatment. In the Medical Certificate, Esteva's suggested disability grading was Grade 8, with 2/3 loss of lifting power.^[12]

On July 19, 2013, Dr. Cruz-Balbon issued another Medical Certificate confirming the finding of both Pott's disease and disc protrusion L2-L5.^[13]

On September 13, 2013, Esteva consulted another doctor, Dr. Maricar P. Reyes-Paguia (Dr. Reyes-Paguia), who issued a Medical Certificate indicating that Esteva was suffering from:

Impression:

1. Multilevel lumbar spondylosis
2. Mild retrolisthesis, L2 on L3
3. Grade 1 spondylolisthesis, L4 on L5
4. Disc desiccation, L2-L3, L3-L4 and L4-L5
5. L2-L3 and L3-L4 posterior disc bulge indenting the thecal sac and facet joint hypertrophy with mild neuroforaminal narrowing.
6. L4-L5 circumferential disc bulge, facet joint arthrosis and ligamentum flavum thickening with moderate spinal and neuroforaminal narrowing impinging the exiting nerve roots.^[14]

In his Complaint, Esteva also stated that on September 17, 2013, he consulted another doctor, Dr. Alan Leonardo R. Raymundo (Dr. Raymundo), an orthopedic surgeon.^[15] The physician issued a Medical Report, which read in part:

Physical examination today showed the patient to be ambulatory but walking with a limp. He has pain on bending forward and backwards and on rotation. He has a positive straight leg raising test on the right at 70 degrees and has weakness of both lower leg muscles, the right weaker than the left.

I have explained to Mr. Esteva that his condition will no longer allow him to return to his previous occupation as an able bodied seaman.^[16]

Thus, Esteva filed a Complaint for total permanent disability benefits.^[17] Esteva sought to recover: (1) disability benefits worth US\$90,000.00 under the Collective Bargaining Agreement; (2) sickness^[18] allowance; (3) reimbursement of medical, hospital, and transportation expenses; (4) moral and exemplary damages; and (5) attorney's fees.^[19]

In its January 29, 2014 Decision,^[20] Labor Arbiter Romelita N. Rioflorido granted Esteva's claims for disability compensation, sickness allowance, and attorney's fees. She gave weight to the findings of Esteva's own doctors that his disability was total and permanent over that of the company-designated physician.^[21]

The dispositive portion of the Decision read:

WHEREFORE, a decision is hereby rendered ordering respondents Wilhe[I]msen Smith Bell Manning, Inc. and Wilhe[I]msen Ship Management jointly and severally liable to pay complainant Jessie C. Esteva, US\$90,000.00, in peso equivalent at the time of payment, representing the disability compensation benefit under the CBA, plus US\$2,700.00 as and for sickwage allowance and ten (10%) percent of the total money claims as attorney's fees. Other claims are denied.

SO ORDERED.^[22]

Thus, Smith Bell Manning filed before the National Labor Relations Commission a Petition for Certiorari.

In its June 18, 2014 Decision, the National Labor Relations Commission affirmed the Labor Arbiter's findings and explained that Esteva was "essentially rendered permanently disabled."^[23] It highlighted the company-designated physician's assessment that Esteva's treatment would take at least a year, which was beyond the maximum period of 240 days for temporary disability, and that he had lost 2/3 of his lifting power.^[24]

Smith Bell Manning filed a Motion for Reconsideration, which was denied in the National Labor Relations Commission July 31, 2014 Resolution.^[25]

Thus, Smith Bell Manning filed before the Court of Appeals a Petition for Certiorari.

In its March 22, 2016 Decision,^[26] the Court of Appeals annulled the judgments of the Labor Arbiter and the National Labor Relations Commission.^[27] The dispositive portion of its Decision read:

WHEREFORE, in view of the foregoing premises, the instant petition for certiorari is hereby **GRANTED**. The assailed NLRC decision and resolution are hereby **ANNULLED**, and a new judgment is hereby **ENTERED** upholding Dr. Cruz-Balbon's disability rating of Grade 8 for private respondent Jessie C. Esteva. Private respondent is also declared entitled to sickness allowance in the amount of US\$2,700. Petitioners are hereby **ORDERED** to make the necessary payment to private respondent.

SO ORDERED.^[28] (Emphasis in the original)

The Court of Appeals gave more weight to the assessment of the company-designated physician, Dr. Cruz-Balbon, than that of Esteva's chosen physican, Dr. Raymundo. Per the assessment, the Court of Appeals found that Esteva had a Grade 8 rating, which meant that he was only entitled to partial disability compensation, not total and permanent disability.^[29]

According to the Court of Appeals, the dispute must be guided by the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA Standard Employment Contract), specifically Section 20-A,^[30] which provides:

SECTION 20. *Compensation and 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.

The Court of Appeals found that Esteva did not follow the procedure prescribed in the POEA Standard Employment Contract. Instead of referring the matter to a third doctor agreed by both parties, he immediately filed a Complaint for permanent disability benefits. Failing to observe this procedure, the Court of Appeals gave more credence to the certification issued by the company-designated physician.^[31]

The Court of Appeals also doubted Dr. Raymundo's certification due to the discrepancy in dates. It found that Esteva had alleged seeing Dr. Raymundo on September 17, 2013, which is a later date than the certificate's date of issuance on July 19, 2013.^[32]

Lastly, the Court of Appeals deleted the award of attorney's fees after it found that Smith Bell Manning did not act in gross and evident bad faith in refusing to pay Esteva's disability benefits.^[33] However, the Court of Appeals sustained the award of sickness allowance amounting to US\$2,700.00.^[34]

On August 10, 2016, Esteva filed before this Court a Petition for Review on Certiorari.^[35]

In its September 21, 2016 Resolution,^[36] this Court ordered respondent Smith Bell Manning to file a comment and petitioner to submit a softcopy of his Petition with a verified declaration. In his October 26, 2016 Compliance,^[37] Esteva sent electronic copies of the Petition and its annexes.

On November 7, 2016, Smith Bell Manning filed its Comment.^[38] On November 24, 2016, Esteva filed his Reply.^[39]

Petitioner asserts that the referral to a third doctor is not mandatory and may be agreed upon by both parties under the POEA Standard Employment Contract.^[40] This, petitioner points out, is supported by the very provision that the Court of Appeals had relied on: that "a third doctor may be agreed jointly between the employer and the seafarer."^[41] He avers that respondents have neither offered nor asked him to refer his injuries to a third doctor for an assessment. Thus, he did not breach the provision.^[42]

Petitioner adds that respondents failed to inform him that the company-designated physician had already made an assessment of his condition. He claims that he was never furnished copies of the disability assessment, and that he only knew of this after both parties had filed their position papers before the Labor Arbiter.^[43]

Moreover, petitioner questions the reliance of the Court of Appeals on the company-designated physician's assessment. He argues that neither the POEA Standard Employment Contract nor the Collective Bargaining Agreement provides that the company-designated physician's assessment would be the lone basis to determine if a seafarer suffers from permanent total disability. Citing jurisprudence, he claims that the company-designated physician's findings may be prone to being biased in the company's favor.^[44]

Petitioner stresses that the company-designated physician's assessment that he only required a one (1)-year treatment is inaccurate, as he still underwent medication and therapy due to the injuries.^[45]

Petitioner also clarifies that he consulted Dr. Raymundo on July 13, 2013, not September 17, 2013. He claims that the error in dates is immaterial because the relevant facts remain: after respondents cut off the medical assistance when the 240-day period lapsed, he consulted Dr. Raymundo, an independent orthopedic surgeon.^[46]

Petitioner claims that the Court of Appeals erred in solely relying on the company-physician's disability grading and ignoring that even this assessment had shown that the injury was serious. He argues that his inability to work for more than 120 days or 240 days has rendered his disability permanent.^[47]

Since his repatriation, "petitioner has not been able to engage in any meaningful activity . . . and there was no . . . indication that he will recover normalcy."^[48] He argues that this makes him more strongly entitled to disability benefits, as his injury occurred during his employment on board the vessel of respondents. For having been incapacitated since October 2012, he claims that he must be awarded disability compensation for permanent and total disability in the amount of US\$90,000.00.^[49]

Petitioner also argues that the Court of Appeals erred in deciding on respondents' Petition for Certiorari as the issues involved alleged misapprehension of facts and misappreciation of evidence, which are correctable only on appeal. Citing jurisprudence, petitioner asserts that a writ of certiorari may not be used to correct a lower tribunal's evaluation of the evidence and factual findings. He argues that since the labor tribunals did not commit any grave abuse of discretion in their judgments, there is no reason to overturn their findings.^[50]

Finally, petitioner asserts that he is entitled to sickness allowance worth US\$2,700.00 and reimbursement of medical and transportation expenses worth P85,000.00. This is since respondents stopped providing medical support since January 2013, leaving petitioner to shoulder the costs. He further claims to be entitled to P300,000.00 as moral and exemplary damages, as well as attorney's fees, because respondents' refusal to pay their contractual obligations is tainted with bad faith.^[51]

On the other hand, respondents argue that the Court of Appeals is correct in giving more credence to the company-designated physician's assessment than that of petitioner's personal doctor. They argue that the latter's Medical Certificate is riddled with doubt, since the form appears to have been purposely issued only for disability evaluation.^[52]

Citing jurisprudence, respondents further claim that the company-designated doctor is in the best position to determine the seafarer's condition.^[53] Thus, the assessment of Dr. Cruz-Balbon, the company-designated physician, is more credible.^[54]

Moreover, respondents argue that petitioner failed to timely object to his disability assessment and refer his condition to a third doctor per the POEA Standard Employment Contract. His failure, according to respondents, constitutes a breach,