SECOND DIVISION

[G.R. No. 220904, September 25, 2019]

JEBSENS MARITIME, INC. AND HAPAG-LLOYD AKTIENGESELLSCHAFT, PETITIONERS, VS. RUPERTO S. PASAMBA, RESPONDENT.

DECISION

REYES, J. JR., J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 17, 2014 and Resolution[3] dated September 30, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 134720.

The Facts

On November 19, 2009, for and on behalf of its foreign principal, Hapag-Lloyd Aktiengesellschaft, local manning agency Jebsens Maritime, Inc.(collectively, petitioners) hired Ruperto S. Pasamba (respondent) as an Able Seaman for a period of six months. On December 21, 2009, respondent boarded CMS Dusseldorf Express.[4]

On January 24, 2010, respondent started experiencing clogged nose, dizziness, and headache.[5]

On February 4, 2010, as his illness persisted despite medications, respondent consulted an on-shore physician at the port, of Japan, wherein he was diagnosed with "Sinusitis, Myringitis (both), Vascular Headache, and Unstable Angina (suspicion)." He was then recommended to be immediately repatriated for treatment.[6]

On February 5, 2010, respondent was repatriated.[7]

On February 6, 2010, respondent reported to petitioners' office and was referred to the company-designated doctors.[8]

On February 9, 2010, respondent was diagnosed with "Polysinusitis, Hypoplastic Frontal Sinuses, Congested Turbinates while Mastoid Series showed Bilateral Mastoiditis." On February 25, 2010 and May 14, 2010, respondent underwent Mastoidectomy with Tympanoplasty procedures as advised by the company-designated doctors.[9]

On July 9, 2010, the company-designated doctors issued a Certificate of Physical Condition, declaring respondent "fit for work" with the following relevant notations:

> [Respondent] subsequently underwent Canal-Up Mastoidectomy, Tympanoplasty type I, Left last February 25, 2010 and after almost 3 months of recovery period, his right ear underwent the same procedure on May 4, 2010.
>
> For both surgeries, pre-operative and post-operative events were unremarkable. He tolerated the said procedure and patient was discharged improved. During his recovery period, he experienced blunted hearing acuity and ear fullness and watery nasal discharge. These were all expected post-surgery and usually temporary. He was then prescribed by our ENT with Clarithromycin 500mg/tab, OD, Levocetirizine dHC1 10mg/tab, OD and Fluticasone furoate (Avamys) nasal spray 1 puff each nostril BID for 1 month.
>
> After 5-7 weeks after each surgery, patient has noted improvement with his hearing. Operative sites showed bilaterally, re-assessment of both ears showed no active ear infections. Turbinates were not congested. Tympanic membranes were also closed and free from any infections. Patient can carry on a normal conversation. He was cleared by our ENT specialist to go back to work.[10]

More than a year thereafter, or sometime in November 2011, respondent was able to obtain re-employment also as an Able Seaman with a contract duration of eight months albeit, from another manning agency and principal, Philippine Transmarine Carriers, Inc. and Marin Shipmanagement Limited, respectively.[11]

On July 31, 2012, respondent consulted an independent doctor who diagnosed him to be suffering from "Moderate Sensorineural Hearing Loss, AD, and Profound Mixed Hearing Loss, AS."[12]

This prompted respondent to claim permanent and total disability benefits against petitioners. Hence, a complaint before the Labor Arbiter was filed on August 13, 2012.[13]

For their part, petitioners countered that respondent is not entitled to permanent and total disability benefits because he was already declared fit to work on July 9, 2010. Petitioners pointed out that the fact that respondent was able to subsequently secure another deployment as an Able Seaman from another company belies his claims that he is permanently and totally disabled.[14]

The Ruling of the Labor Arbiter

Upholding the findings of the company-designated doctors that respondent is already fit to work and considering the fact that respondent was subsequently re-employed, the Labor Arbiter ruled that respondent is not entitled to permanent and total disability benefits. It was, however, ruled that respondent is entitled to attorney's fees and sickness allowance, which should be reckoned from the date of sign-off from the vessel on February 5, 2010 until he was declared fit to work on July 9, 2010. In his July 18, 2013 Decision,[15] the Labor Arbiter disposed, thus:

> ***WHEREFORE***, premises considered, judgment is hereby rendered ordering [petitioners] JEBSENS MARITIME, INCORPORATED and HAPAG-LLYOD AKTIENGESELLSCHAF, jointly and severally, to pay [respondent] RUPERTO S. PASAMBA sickness allowance for USD4,800, plus, 10% attorney's fees of the monetary award.
>
> All other claims are DISMISSED for lack of merit.
>
> ***SO ORDERED.***[16]

The Ruling of the National Labor Relations Commission

On appeal, the National Labor Relations Commission (NLRC) reversed and set aside the Labor Arbiter's Decision. In its December 11, 2013 Decision,[17] the NLRC ruled that respondent is entitled to permanent and total disability benefits in accordance with the Collective Bargaining Agreement (CBA) considering that he was unable to work for more than 120 days. The NLRC pounded on the fact that respondent was declared fit to work only on July 9, 2010 or 154 days after sign off from the vessel.

According to the NLRC, respondent's subsequent re-employment is of no moment as it came only after a year from the company-designated doctors' declaration of his fitness to work. Despite such re-employment, the fact remains that respondent was still unable to work for more than 120 days. The NLRC cited the case of *Crystal Shipping, Inc. v. Natividad*,[18] wherein the Court ruled that the fact that the seafarer was cured after a couple of years is not relevant to his claim for disability benefits as "[t]he law does not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability."

Further, the NLRC also found that the exceptional 240-day period is not applicable to this case as such extension for the company-designated doctors to issue their final assessment "requires, as a condition *sine qua non*, that further treatment is required beyond 120 days and the company-designated physician must declare such." The NLRC found that the company-designated doctors made no such declaration in this case, concluding, thus, that the 240-day extension period cannot be applied.[19]

Anent the sickness allowance, the NLRC found that the documentary evidence proved that payment made by the petitioners therefor covered only the period from March 1, 2010 to June 15, 2010. Thus, additional sickness allowance was ordered to be paid to cover the period from the date of respondent's sign off on February 5, 2010 to February 28, 2010.[20]

The dispositive portion of the NLRC Decision reads, thus:

> **IN VIEW WHEREOF**, [respondent's] appeal is **GRANTED**. The assailed Decision is hereby **MODIFIED**. The corporate [petitioners] are hereby **ORDERED** to pay the [respondent] permanent and total disability benefits in the amount of US$80,000.00 or its peso equivalent at the prevailing exchange rate on the date of actual payment. Said

> [petitioners] are, likewise, directed to pay the [respondent] sickness allowance for the period starting from the 5th to the 28th of February 2010 and attorney's fees equivalent to ten percent (10%) of the total monetary award.
>
> **SO ORDERED**.[21]

Petitioners' motion for reconsideration was denied in the NLRC Resolution[22] dated January 28, 2014:

> **WHEREFORE**, the Motion for Reconsideration is hereby **DENIED**. No second Motion for Reconsideration of the same nature shall be entertained and the filing thereof shall subject the movant to be cited in contempt in accordance to the power of this Commission as provided under Article 218 of the Labor Code of the Philippines vis-a-vis Section 15 of Rule VII and Rule IX of the 2011 Revised Rules of Procedure of this Commission.
>
> SO ORDERED.[23]

The Ruling of the Court of Appeals

In its December 17, 2014 assailed Decision,[24] the CA affirmed the NLRC's conclusion that respondent is entitled to permanent and total disability benefits. The CA ruled that "the fact that [respondent] was unable to perform his customary work as an Able Seaman for more than 120 days establishes permanent total disability."[25] According to the CA, "[t]his holds true despite a declaration by the company-designated doctors that the seafarer is fit to work; the disability is still considered permanent and total if such declaration is made after the expiration of 120 days from repatriation.[26]

The award of sickness allowance was also upheld but modified to include the periods from February 5 to 28, 2010; June 16 to 30, 2010, through July 1 to 9, 2010 for the entitlement thereto.[27]

The attorney's fees awarded were also upheld.[28]

The CA disposed, thus:

> **WHEREFORE**, premises considered, the Petition for *Certiorari* is hereby **DENIED. ACCORDINGLY**, the challenged Decision dated 11 December 2013 and Resolution dated 28 January 2014 rendered by the NLRC, Fourth Division in NLRC LAC NO.-OFW-M-08-000762-13, NLRC NCR(M)-08-11911-12 are **AFFIRMED** with **MODIFICATION** in that [petitioners] are **ORDERED** to pay, jointly and severally, [respondent] sickness allowance for the period starting from the 5th to the 28th of February 2010, the 16th to the 30th of June 2010, and the 1st to the 9th of July 2010, plus 10% attorney's fees of the monetary award. The rest of the assailed Decision **STANDS**.

SO ORDERED.[29]

Petitioners' motion for reconsideration was denied in the CA's September 30, 2015 assailed Resolution,[30] which reads:

> We **DENY** the *Motion for Reconsideration* filed by Petitioners of this Court's Decision dated 17 December 2014 as no meritorious or strong reasons were raised therein which would warrant the modification, much less reversal, of the Decision sought to be reconsidered.
>
> **SO ORDERED**.[31]

Hence, this petition.

It is undisputed that respondent was not able to go back to work as an Able Seaman for more than 120 days from his repatriation. It is also undisputed that the company-designated doctors declared respondent fit to work only on the 154th day from repatriation.

Petitioners, however, argue that respondent's inability to work for more than 120 days does not, by itself, amount to permanent and total disability. Neither would the fact that the fit-to-work declaration was issued beyond the 120-day period lead to the conclusion that respondent was permanently and totally disabled. Petitioners cite the case of *Vergara v. Hammonia Maritime Services, Inc*.[32] and the subsequent ruling of the Court, where it was held that when no declaration is made as to the seafarer's disability grading or fitness to work within the 120-day period because further medical treatment is required, the seafarer cannot be deemed permanently and totally disabled unless such treatment exceeds the maximum period of 240 days.[33]

Petitioners also argue that respondent is entitled to sickness allowance equivalent to his basic wage only for the period of 130 days invoking the CBA, which is more than the maximum 120 days provided under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).[34]

Lastly, petitioners question the award of attorney's fees.[35]

The Issues

I.

Is respondent entitled to permanent and total disability benefits?

II.

Is respondent entitled to sickness allowance from repatriation until final assessment of the company-designated doctors?

III.

Is respondent entitled to attorney's fees?