

SECOND DIVISION

[G.R. No. 226656, April 23, 2018]

ARNEL T. GERE, PETITIONER, VS. ANGLO-EASTERN CREW MANAGEMENT PHILS., INC. AND/OR ANGLO-EASTERN CREW MANAGEMENT (ASIA), LTD., RESPONDENTS.

[G.R. No. 226713]

ANGLO-EASTERN CREW MANAGEMENT PHILS., INC. AND/OR ANGLO-EASTERN CREW MANAGEMENT (ASIA), LTD., PETITIONERS, VS. ARNEL T. GERE, RESPONDENT.

D E C I S I O N

REYES, JR., J:

To require the seafarer to seek the decision of a neutral third-party physician without primarily being informed of the assessment of the company-designated physician is a clear violation of the tenets of due process, and shall not be countenanced by the Court.

The Case

Consolidated in this case are the Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court filed (1) by Arnel T. Gere (petitioner) against Anglo-Eastern Crew Management Phils., Inc. and Anglo-Eastern Crew Management (Asia), Ltd. (hereinafter collectively referred to as the "respondents") in G.R. No. 226656, and (2) by respondents against the petitioner in G.R. No. 226713.

The petitions challenge before the Court the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 142422, promulgated on April 21, 2016, which affirmed with modification the Decision^[2] and Resolution^[3] of the Panel of Voluntary Arbitrators in AC-971-RCMB-NCR-MVA-123-11-11-2014 dated May 29, 2015 and August 25, 2015, respectively. The latter decision and resolution granted total and permanent disability benefits in favor of the petitioner.

Likewise challenged is the subsequent Resolution of the CA^[4] promulgated on August 26, 2016, which upheld the earlier CA decision.

The Antecedent Facts

The petitioner is a Filipino seafarer who signed a Contract of Employment^[5] with respondent Anglo-Eastern Crew Management (Asia), Ltd., through its manning agent in the Philippines, respondent Anglo-Eastern Crew Management Phils., Inc. The petitioner was accepted as an able seaman aboard the vessel "MV JENNY N" for a duration of nine (9) months, receiving a basic monthly salary of US\$582.00 on a

44-hour work week, with overtime pay of US\$324.00 and vacation leave pay of US\$213.00. Also included in the terms of the petitioner's employment is the Collective Bargaining Agreement (CBA)^[6] between (1) the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), of which the petitioner is a member, and (2) the respondents herein.^[7]

On January 4, 2014, the petitioner suffered an accident while performing his duties on board the vessel. According to the findings of the CA the petitioner was placing a rat guard on the headline of the vessel when he accidentally stepped on a bulwark support causing him to lose his balance and to eventually land awkwardly and heavily on his right arm.^[8] The petitioner was immediately referred to a medical facility in Trinidad and Tobago, where he was subjected to x-ray and the placement of a cast over the affected arm.^[9]

Due to this, on January 10, 2014, the petitioner was repatriated to the Philippines for medical reasons. He was confined at the Marine Medical Services-the respondents' accredited medical services provider, consequently referred to Dr. Ferdinand R. Bernal, an orthopedic surgeon at the Cardinal Santos Medical Center, and underwent different medical examinations, which thereafter disclosed the impression: "Closed Complete Fracture, Right Radius, Undisplaced."^[10]

From that moment until August 27, 2014, the petitioner underwent different medical examinations, procedures, and treatments on the injured arm and, subsequently, on his hips.^[11]

The point of divergence in the statement of facts between the parties arose from the issuance-or non-issuance-of the disability grading of the petitioner's injury.

According to the respondents, the company-designated physician issued on April 28, 2014 an interim disability grading of "Grade 10 - loss of grasping power"^[12] and on August 12, 2014, a final disability grading of "Grade 10 - ankylosed wrist in normal position."^[13] The respondents asserted in their petition that they informed the petitioner of these findings. They said:

Several discussions were had with the Respondent (herein referred to as the petitioner) about his state of health. Petitioners (herein referred to as the respondents) informed the Respondent (petitioner) of the disability assessment of the company-designated doctors. The commensurate amount of disability benefits was accordingly offered to him, as shown in the exchange of communication between Pandiman Philippines, Inc., the Petitioners' (Respondents') Protection and Indemnity Correspondent, and Private Respondent's (Petitioner's) counsel, Atty. Romulo P. Valmores.^[14]

In contrast, however, the petitioner remained firm in asserting that the respondents have not informed him of these medical assessments.^[15] According to him, more than 240 days of treatment have already lapsed without the disability grading from the company-designated physician, and so, on September 11, 2014, he consulted his personal physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira) of the Armed Forces of the Philippines Medical Center. Dr. Magtira later on opined that the petitioner suffers from "partial permanent disability with Grade 8 impediment based on the

POEA contract."^[16] Dr. Magtira further concluded that the petitioner is "now permanently UNFIT in any capacity for further sea duties."^[17]

On the basis of the foregoing, the petitioner asked the respondents to pay him disability benefits based on the CBA between AMOSUP and the respondents. The latter denied the claim.

Hence, on the strength of the provisions under the CBA,^[18] the petitioner filed a Notice to Arbitrate before the Office of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board (NCMB). After the failure of the parties to arrive at an amicable settlement, the panel rendered its Decision on May 29, 2015 in favor of the petitioner. The dispositive portion of the NCMB Decision reads:

WHEREFORE, ALL THE ABOVE CONSIDERED, a Decision is hereby promulgated directing the respondents, jointly and severally, to pay complainant the following amounts:

- 1.) US\$95,949.00 as full disability benefits under the CBA;
- 2.) US\$2,328.00 representing his illness allowance; and
- 3.) 10% of the total monetary award for attorney's fees.

All other claims are dismissed.

SO ORDERED.^[19]

Aggrieved the respondents appealed the NCMB decision before the CA, which later on modified the same. The *fallo* of the appellate court's decision reads:

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED**. The Decision dated 29 May 2014 and Resolution dated 25 August 2015 of the Panel of Voluntary Arbitrators in AC-971-RCMBNCR-MVA-123-11-11-2014 are hereby **AFFIRMED** with **MODIFICATIONS**, such that

1. The total and permanent disability benefit awarded in the amount of US\$95,949.00 is hereby **REDUCED** to US\$60,000.00 pursuant to the 2010 POEA-SEC; and
2. The award of sickness allowance in the amount of US\$2,328.00 is hereby **DELETED** for lack of merit.

SO ORDERED.^[20]

Both parties were unsatisfied with the appellate court's decision. Hence, the instant petitions.

The Issues

The petitioner anchors his plea of the partial reversion of the CA decision on the following ground:

WITHOUT A DEFINITE AND FINAL ASSESSMENT OF THE PETITIONER'S FITNESS TO WORK OR PERMANENT DISABILITY; THE LAW STEPS IN TO CONSIDER THE DISABILITY TO BE PERMANENT AND TOTAL WHICH ENTITLES HIM TO FULL, DISABILITY BENEFITS UNDER THE CBA.^[21]

On the other hand, the respondents put forth the following grounds:

- I. THIS CLAIM SHOULD HAVE BEEN DISMISSED OUTRIGHT IN VIEW OF THE PRIVATE RESPONDENT'S BLATANT DISREGARD OF THE CONFLICT-RESOLUTION PROCEDURE ON REFERRAL TO A THIRD DOCTOR, AS EXPRESSLY MANDATED BY THE POEA-STANDARD EMPLOYMENT CONTRACT AND THE PARTIES' COLLECTIVE BARGAINING AGREEMENT.
- II. THE DISABILITY ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIANS MUST BE ACCORDED AUTHORITATIVE VALUE, BEING BASED ON EXTENSIVE MEDICAL EXAMINATIONS, DIAGNOSIS, AND TREATMENT, AS OPPOSED TO THAT OF THE PRIVATE RESPONDENT'S PERSONAL DOCTOR.
- III. CONTRARY TO THE RULING OF THE COURT OF APPEALS, THE PRESENT STATE OF LAW AND JURISPRUDENCE MANDATES THAT A SEAFARER'S DISABILITY ASSESSMENT BE BASED SOLELY ON THE DISABILITY GRADINGS UNDER THE POEA-STANDARD EMPLOYMENT CONTRACT, AS REAFFIRMED IN THE 6 APRIL 2016 CASE OF *SCANMAR MARITIME SERVICES, INC. V. CONAG*.
- IV. IN ANY EVENT, PRIVATE RESPONDENT IS NOT ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS, AS THE DEGREE OF HIS DISABILITY WAS DETERMINED WITHIN THE 240-DAY PERIOD PROVIDED BY THE LABOR CODE.
- V. PRIVATE RESPONDENT SHOULD NOT HAVE BEEN AWARDED ATTORNEY'S FEES CONSIDERING THAT PETITIONERS WERE NEVER IN BAD FAITH AND THERE IS NO EQUITABLE JUSTIFICATION THEREFOR.^[22]

In essence, while there is no question that the petitioner did indeed suffer an injury during the course of his employment with the respondents, both parties now ask the Court whether or not such injury is compensable under Philippine law.

In particular, the parties herein seek the guidance of the Court to answer whether or not the company-designated physician was able to issue a final disability grading of the petitioner's injury within 240 days from the moment of his medical attention. If not, then, as the petitioner asserted, his injury would be considered final and permanent insofar as compensation is concerned; if so, then the disability grading issued by the company-designated physician would stand.

Moreover, the Court is called upon once again to determine whether or not the referral to a third doctor is mandatory in the event of disagreement between the company-designated physician and the seafarer's personal physician.

The Court's Ruling

The rise of the Filipino as the preferred seafarer worldwide place emphasis on the importance of their effort to uplift Philippine economy. As such, much importance is accorded to the safety and the well-being of the country's workers who unselfishly

contribute their time and devotion to the country and their families. To this end, Philippine jurisprudence regarding the disability claims of Filipino seafarers has come a long way. The Court has evolved with the times, as it were, to answer and face the challenges that befall the Filipino worker.

Among the most controversial issues that concern seafarers are the so-called 120-day or 240-day rules for the determination of disability.

Initially, there was confusion as to the application of the 120-day period found in Article 192(c)(1) of the Labor Code *vis-a-vis* the application of the 240-day period found in Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code.

Article 192(c)(1) provides:

ART. 192. Permanent Total Disability.

x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than **one hundred twenty days**, except as otherwise provided in the Rules; (Emphasis and underscoring supplied)

On the other hand, the implementing rules provide that:

Sec. 2. Period of entitlement. - (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability** in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.^[23] (Emphasis and underscoring supplied)

The Court, in recognizing these provisions, and for the final resolution of any confusion that may arise therefrom, formulated guidelines in the case of *Elburg Shipmanagement Phils., Inc. vs. Quiogue, Jr.*,^[24] as cited in the recent case of *Paulino M. Aldaba vs. Career Philippines Ship-Management, Inc. Columbia Ship Management Ltd., and/or Verlou Carmelino*^[25] As it now stands, the rules to be followed are:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then