

FIRST DIVISION

[G.R. No. 232275, July 23, 2018]

**SOLPIA MARINE AND SHIP MANAGEMENT, INC., PETITIONER,
VS. MICHAEL V. POSTRANO, RESPONDENT.**

DECISION

TIJAM, J.:

Before Us is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated November 14, 2016 and Resolution dated June 15, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 143725.

The Facts

Respondent Michael V. Postrano (Postrano) was engaged by petitioner Solpia Marine and Ship Management, Inc. (Solia) as an able seaman aboard MV Daebo IBT, for and in behalf of its principal Daebo Ship Management Co., Ltd. on a 10-month contract^[3] signed by the parties and approved by the Philippine Overseas Employment Administration (POEA) on March 13, 2012. Postrano's work involved strenuous manual work, including supervising the work of junior ratings, standing watch at bow or on wing of bridge to look for obstructions in the path of the vessel, measuring the depth of water in shallow or unfamiliar waters, steering the ship by automatic, remote, or manual control, breaking out rigs, overhauling and stowing cargo handling gears, among others.^[4]

On December 9, 2012, Postrano sustained a fracture on his right hand and an open wound on his left hand when he was pinned while arranging a ladder. Consequently, he was given medical attention in Indonesia and thereafter, in Korea. Although his condition was resolved, he was repatriated to the Philippines on January 1, 2013.^[5]

Upon his arrival, Postrano was referred to the YGEIA Medical Center, Inc. for x-ray. The results of the same disclosed that his right forearm suffered incomplete fracture on the middle third shaft of the right ulna. The company-designated physician then prescribed medication for pain management.^[6]

On February 5, 2013, Postrano was advised to undergo physical therapy. However, he opted, with permission, to continue the same in Compostela Valley as it is his place of residence. The permission secured was with the condition that Postrano must return to the company-designated physician for follow-up.^[7]

After completing 10 sessions of physical therapy in Tagum Doctors Hospital, Inc. on March 14, 2013, Postrano complied with the company-designated physician's order to come back for a follow-up. During such consultation, the latter advised him to continue with the physical therapy and to return thereafter. Despite said advice,

Postrano instead merely continued with physical therapy and failed to return to the company-designated physician after completing another series of sessions.^[8]

In a letter dated June 4, 2013, Postrano asked Ms. Shirley E. Valbuena for the release of his remaining sickness allowance to enable him to continue his required treatment but to no avail. He once again demanded the same in a letter dated July 18, 2013; still to no avail. Subsequently, he forwarded to Solpia the certification issued by the Tagum Doctors Hospital, Inc. that he underwent physical therapy sessions, for which he demanded the reimbursement of medical and transportation expenses.^[9]

As he was worried of his condition, Postrano consulted an independent physician who pronounced that Postrano suffered a Grade 9 disability.^[10]

Postrano filed a complaint for permanent total disability benefits against Solpia, Carlito C. Mendoza (Mendoza) and/or Daebo Ship Management Co., Ltd. He argued that the 120/240 day-period had lapsed without the company-designated physician's diagnosis of his condition. On this note, he reasoned financial constraints anent his failure to comply with the company-designated physician's instruction to return for a check-up.^[11]

For their part, Solpia, Mendoza and Daebo Ship Management Co., Ltd. contended that it was because of Postrano's own doing that the company-designated physician was prevented from making his medical assessment as Postrano failed to return after March 14, 2014 for a follow-up session.^[12]

Ruling of the Labor Arbiter

In a Decision^[13] dated April 30, 2015, the Labor Arbiter (LA) dismissed the complaint for lack of merit. The LA ruled that Postrano's medical sessions with the company-designated physician was not yet completed when he secured the opinion of an independent physician, a violation under the POEA Standard Employment Contract (SEC).^[14] The *fallo* thereof reads:

IN VIEW OF THE FOREGOING, the complaint, for disability benefit, filed in the instant case, is DISMISSED for lack of merit.

Notwithstanding, [Solia] should pay the complainant of his sickness allowance of US\$ 1,635.00.

Also, [Postrano] should be repaid of his medical and transportation expenses in total amount of P 33,998.96.

SO ORDERED.^[15]

Ruling of the National Labor Relations Commission

The National Labor Relations Commission (NLRC), in a Resolution^[16] dated August 27, 2015, affirmed the ruling of the LA and maintained that Postrano prematurely consulted an independent physician as he was obligated to report to the company-designated physician after undertaking physical therapy sessions, thus:

WHEREFORE, premises considered, [Postrano's] appeal is **DISMISSED** for lack of merit.

SO ORDERED.^[17]

Postrano filed a Motion for Reconsideration,^[18] which was denied in a Resolution^[19] dated October 29, 2015.

On appeal, the CA reversed and set aside the NLRC ruling in a Decision^[20] dated November 14, 2016. The CA ruled that the failure of the company-designated physician to give a definitive impediment rating of respondent's disability is sufficient basis to declare that he suffered permanent and total disability. The *fallo* thereof reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The Resolutions promulgated on August 27, 2015 and October 29, 2015 of the [NLRC], in NLRC LAC No. 07-000526-15 [NLRC NCR-OFW-M-07-08335-14] are **REVERSED and SET ASIDE**. Solpia, [Mendoza] and/or Daebo Ship Management Co., Ltd. are hereby **ORDERED** to pay [Postrano] the amount of US\$60,000.00 as full disability benefits in addition to the sickness allowance in the amount of US\$1,635.00 as well as the medical transportation expenses amounting to US\$33,998.96 as ordered by the LA in his April 30, 2015 Decision.

SO ORDERED.^[21]

A motion for reconsideration^[22] was filed by Solpia, Mendoza and/or Daebo Ship Management Co., Ltd., which was denied in a Resolution^[23] dated June 15, 2017, thus:

WHEREFORE, premises considered, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.^[24]

Issue

Is Postrano entitled to the award of permanent and total disability benefits?

Ruling of the Court

Essentially, Solpia and Daebo Ship Management Co., Ltd. contend that the award of permanent and total disability benefits was erroneous as Postrano abandoned his treatment which prevented the company-designated physician from making any assessment.

The petition is impressed with merit.

Article 192(c)(1) of the Labor Code provides that:

Art. 192. Permanent 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;

Rule VII, Section 2(b) of the Amended Rules on Employees' Compensation (AREC) provides:

Sec. 2. Disability - x x x

(b) A **disability is total and permanent** if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

Rule X, Section 2 of the AREC Amended Rules on Employees' Compensation provides 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.

Section 20(3) of the POEA-SEC states:

Sec. 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

For this purpose, the seafarer shall submit himself to a post employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same