

## THIRD DIVISION

[ G.R. No. 229192, July 23, 2018 ]

**MAGSAYSAY MOL MARINE, INC. AND/OR MOL SHIP  
MANAGEMENT (SINGAPORE) PTE. LTD., PETITIONERS, VS.  
MICHAEL PADERES ATRAJE RESPONDENT.**

### DECISION

**LEONEN, J.:**

The third doctor rule does not apply when there is no final and definitive assessment by the company-designated physicians.

This is a Petition for Review on Certiorari<sup>[1]</sup> against the Court of Appeals August 5, 2016 Decision<sup>[2]</sup> and January 5, 2017 Resolution<sup>[3]</sup> in CA-G.R. SP No. 141333. The Court of Appeals affirmed the May 15, 2015 Decision<sup>[4]</sup> of the Office of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board granting Michael Paderes Atraje (Atraje) permanent total disability benefits in the amount of US\$95,949.00 and 10% attorney's fees. It also denied Magsaysay Mol Marine, Inc. (Magsaysay Mol) and Mol Ship Management (Singapore) Pte. Ltd.'s (Mol Ship) Motion for Reconsideration.

The facts as narrated by the Court of Appeals are as follows:

On February 11, 2014, Atraje entered into a Contract of Employment<sup>[5]</sup> with Mol Ship, through its local manning agent, Magsaysay Mol, to work on board the vessel *Carnation Ace* as Second Cook. The employment contract was for nine (9) months with a basic monthly salary of US\$599.00.<sup>[6]</sup> It was his seventh (7<sup>th</sup>) contract with the company.<sup>[7]</sup>

Atraje boarded the vessel on February 28, 2014.<sup>[8]</sup>

On March 4, 2014, at around noontime, Atraje slipped and fell while holding a casserole containing water and sliced vegetables. His head hit the stainless disposer and the floor. He had seizure and lost his consciousness for about five (5) hours. The incident was witnessed by the messman who was with him at that time.<sup>[9]</sup> When the vessel reached Singapore on March 8, 2014, he was brought to Singapore General Hospital,<sup>[10]</sup> where he underwent brain magnetic resonance imaging (MRI), electroencephalogram (EEG), and brain computed tomography (CT) scan. He was diagnosed to have suffered Epileptic Seizure with post-fit neurological deficit. He was declared unfit to work and recommended to be repatriated.<sup>[11]</sup>

Atraje arrived in the Philippines on March 12, 2014, and was referred to Shiphealth, Inc. (Shiphealth)<sup>[12]</sup> for further medical evaluation and treatment. He was noted to

have left-sided hemiparesis. He underwent repeat brain CT scan, electrocardiography (ECG), EEG, and brain MRI, which showed normal results. He was advised to undergo physical therapy for motor function and muscle strength improvements.<sup>[13]</sup>

Atraje likewise underwent cervical spine MRI showing "mild desiccation at C3-4, C4-5, C5-6 with impression of mild cervical spondylosis with multi-level disc disease." He was still advised to undergo physical therapy.<sup>[14]</sup>

On April 4, 2014, Atraje was examined by an Orthopedic Spine Surgeon wherein the assessment was Ossified Posterior Longitudinal Ligament. He was advised to continue with the physical therapy and oral medications for the next two (2) weeks, and to undergo laminoplasty, C3-C6, if the left-sided weakness persisted or worsened.<sup>[15]</sup>

On April 25, 2014, Shiphealth issued a medical report stating that the Neurologist service's reassessment was single seizure episode. There was no indication for Atraje to undergo further diagnostic or treatment intervention neurology-wise. Hence, Atraje was discharged from Neurology service, although referral to Orthopedic Spine Surgery was recommended.<sup>[16]</sup>

On May 12, 2014, Atraje completed his 12 sessions of physical therapy. However, persistence of gait instability and weakness on his left side were still noted. Additionally, he reported intermittent recurrences of lower back pain.<sup>[17]</sup>

Shiphealth opined that "the current symptoms of weakness and spasticity of the left upper and lower extremities could be secondary to the [Ossified Posterior Longitudinal Ligament]."<sup>[18]</sup> Surgery was contemplated or, as an alternative, physical therapy for an indefinite period of time. The company-designated physicians further stated that the cervical Ossified Posterior Longitudinal Ligament may be pre-existing. "However, slight trauma to the neck may cause symptoms which may qualify it as work-aggravated."<sup>[19]</sup>

Atraje continued to suffer from shoulder and neck pain, and had difficulty in using his upper extremities. He complained of tenderness on the paracervical area and was not restored to his pre-injury health status. He consulted an independent specialist, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who issued on June 19, 2014 a Medical Report,<sup>[20]</sup> which stated that Atraje was "permanently unfit in any capacity to resume his sea duties as a seaman."<sup>[21]</sup>

On June 25, 2014 or 105 days from disembarkation, Shiphealth issued an Interim Disability Grading<sup>[22]</sup> of Grade 10: "Head, moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities."<sup>[23]</sup>

Atraje was referred to Ygeia Medical Center, Inc. (Ygeia Medical Center) for second opinion. In a letter<sup>[24]</sup> dated October 2, 2014, Dr. Lourdes A. Quetulio (Dr. Quetulio), the Medical Director of Ygeia Medical Center, stated that Atraje's illnesses, namely, "Herniated Nucleus Pulposus L3-4, L4-5, LS-S1 with Spondylosis and Radiculopathy, Bilateral Cervical Radiculopathy C5-C6 with degenerative changes;

and Carpal Tunnel Syndrome Left, Moderate, are not work-related."<sup>[25]</sup>

Atraje sought payment of disability benefits from Magsaysay Mol and Mol Ship, invoking Article 28 of the Collective Bargaining Agreement<sup>[26]</sup> between All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines, and Mol Ship, represented by Magsaysay Mol.<sup>[27]</sup> This Agreement is otherwise known as the IBF JSU/AMOSUP-IMMAJ CBA.<sup>[28]</sup>

However, Atraje's demands proved futile.<sup>[29]</sup>

Thus, he filed a Complaint against Magsaysay Mol and Mol Ship for payment of total and permanent disability benefits, damages, and attorney's fees.<sup>[30]</sup>

On November 17, 2014, the parties agreed to terminate the mediation and to convene a Voluntary Arbitration Panel.<sup>[31]</sup>

Not reaching an amicable settlement, the parties were directed to submit their respective pleadings.<sup>[32]</sup>

In its May 15, 2015 Decision,<sup>[33]</sup> the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board awarded disability benefits of US\$95,949.00 plus 10% of this amount as attorney's fees in favor of Atraje.<sup>[34]</sup> Finding that his injuries were work-related, it held that there was sufficient evidence to establish that he indeed suffered a fall while on board the ship, which caused injury to his neck area and his wrist. However, preexistence of epileptic seizure has not been proven.<sup>[35]</sup> The Panel of Voluntary Arbiters further gave credence to the Grade 1 assessment of Atraje's physician over the company-designated physician's interim assessment of Grade 10.<sup>[36]</sup> It further noted that while Atraje initiated submitting to examination by a third doctor, there was silence on the part of Magsaysay Mol and Mol Ship. Hence, it held that Atraje could not be faulted anymore if the appointment of a third physician was deemed waived in this case.<sup>[37]</sup>

Magsaysay Mol and Mol Ship's subsequent Motion for Reconsideration<sup>[38]</sup> was denied in the Panel of Voluntary Arbiters' July 3, 2015 Resolution.<sup>[39]</sup>

Atraje filed a Motion for Execution,<sup>[40]</sup> which was granted by the Panel of Voluntary Arbitrators.<sup>[41]</sup> Magsaysay Mol and Mol Ship paid Atraje the amount of US\$95,949.00 plus 10% of this amount as attorney's fees, without prejudice to the outcome of their Rule 65 petition before the Court of Appeals.<sup>[42]</sup> A Deed of Conditional Satisfaction of Judgment<sup>[43]</sup> dated September 24, 2015 was executed between the parties and submitted to the National Conciliation and Mediation Board.<sup>[44]</sup>

In its August 5, 2016 Decision<sup>[45]</sup> and January 5, 2017 Resolution,<sup>[46]</sup> the Court of Appeals affirmed<sup>[47]</sup> the Panel of Voluntary Arbitrators' decision and denied<sup>[48]</sup> Magsaysay Mol and Mol Ship's subsequent motion for reconsideration.<sup>[49]</sup>

On March 1, 2017, Magsaysay Mol and Mol Ship filed their Petition for Review on Certiorari before this Court.<sup>[50]</sup>

Petitioners maintain that respondent is not entitled to permanent total disability benefits because his illnesses are not work-related, according to the letter of Dr. Quetulio on October 2, 2014.<sup>[51]</sup> They add that respondent's repatriation was not due to his alleged accident but due to a single episode of seizure,<sup>[52]</sup> the cause of which was unknown per the medical report of the same company-designated doctor.<sup>[53]</sup> Finally, petitioners argue that referral to a third doctor in case of conflicting findings of the company-designated doctor and the seafarer's personal doctor is mandatory. Since respondent failed to comply with this requirement, the assessment of the company-designated doctor should prevail.<sup>[54]</sup>

In his Comment,<sup>[55]</sup> respondent counters that his medical conditions are compensable under the governing Collective Bargaining Agreement<sup>[56]</sup> and that the Court of Appeals did not err in granting him permanent and total disability benefits.<sup>[57]</sup> The statements of Messman Francisco M. De Guzman (Messman De Guzman)<sup>[58]</sup> and Chief Cook Alvin Bartolome (Chief Cook Bartolome)<sup>[59]</sup> show clearly that respondent suffered an accidental fall while on duty.<sup>[60]</sup> Respondent adds that petitioners have not presented a Master's Report to prove their allegation that no accident occurred that time.<sup>[61]</sup> Moreover, the Certification<sup>[62]</sup> of Capt. Igor Pisarenko (Capt. Pisarenko) that there was no record of an accident involving respondent in the ship's official logbook is not the best evidence of this fact; rather, it is the logbook itself.<sup>[63]</sup> Respondent contends that "[p]etitioners' unjustifiable failure to present the 'Carnation Ace' logbook is tantamount to willful suppression of evidence, adverse to them if presented."<sup>[64]</sup>

Respondent further contends that Dr. Quetulio's October 2, 2014 letter relied upon by petitioners does not discount but even lends support to his claim that his medical conditions are work-related.<sup>[65]</sup> Dr. Quetulio's opinion that his injury is not work-related is negated by the Grade 10 assessment given by the other company-designated physicians at Shiphealth, which constituted "an admission that [respondent's] disabling conditions are work-related nothing less."<sup>[66]</sup>

Finally, respondent counters that non-referral to a third doctor is not a drawback to his complaint. In the first place, the medical assessment and opinion of the company-designated doctors were not disclosed to him. He came to know about them only after his complaint had been filed. As of April 21, 2014, the company stopped providing for his treatment and he was, since then, left on his own. He could not have complied with the third doctor rule since he was not given any assessment by the company-designated physicians even after his treatment had been supposedly terminated. If at all, it was petitioners who committed a breach of contract by withholding and concealing his medical records.<sup>[67]</sup>

This Court resolves the issue of whether or not the Court of Appeals erred in affirming the award of permanent and total disability benefits in favor of respondent Michael Paderes Atraje.

This Court denies the Petition.

## I

Petitioners insist that respondent's illnesses are not work-related. They anchor their position on Dr. Quetulio's declaration in her October 2, 2014 letter that without any past medical results or examinations, it was difficult to trace the causes of the illnesses, thereby concluding that they were not work-related.<sup>[68]</sup>

However, the same letter relied upon by petitioners likewise acknowledged that "Herniated Nucleus Pulposus is considered work-related if there is history of trauma or carrying of heavy objects. Carpal Tunnel Syndrome is considered work-related if there is history of repetitive movement of the involved wrist/hand."<sup>[69]</sup> Shiphealth's earlier report also declared that a "slight trauma to the neck may cause symptoms which may qualify [respondent's injuries] as work[-]aggravated."<sup>[70]</sup>

In this case, it has been established that there was history of trauma at work involving respondent while on board the vessel. The Panel of Voluntary Arbitrators held that substantial evidence<sup>[71]</sup> exists showing that respondent indeed suffered a fall while on board the ship, which caused injury to his neck area and his wrist.

[E]xtant from the uncontested statement of Chief Cook Alvin Bartolome, that he together with Messman De Guzman saw [respondent] had a sudden fall which incident they immediately reported to their superiors . . . [W]hen [respondent] regained his consciousness, he was asked why and he answered that he was not able to sleep due to the noise of the air-conditioning unit in his cabin.

Such recorded event of [respondent] having suffered a fall and/or lost consciousness while in the course of performing duties as Second Cook aboard has gained prominence as the starting point of the medical condition . . .

It does not require a rocket scientist to ascertain the fact that a person who suffers from lack of or without sleep has weakened systems with tendency to pass out and/or prone to accident. Hence, the sudden fall experienced by [respondent] at work which resulted to the disabling injury on his neck area and aggravated by the injury on his wrist otherwise known as Carpal Tunnel Syndrome.<sup>[72]</sup>

The Panel of Voluntary Arbitrators further found no evidence to prove that respondent's condition "merely arose from wear and tear or degeneration,"<sup>[73]</sup> or that he was suffering from a preexistent illness.<sup>[74]</sup>

These factual findings of the Panel of Voluntary Arbitrators, which were affirmed by the Court of Appeals, are binding and will not be disturbed absent any showing that they were made arbitrarily or were unsupported by substantial evidence.<sup>[75]</sup>

Petitioners would insist, however, that there was no accident involving respondent. They point to the Certification of Capt. Pisarenko, which stated as follows: