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SECOND DIVISION

[G.R. No. 221199, August 15, 2018]

GEMINIANO S. MURILLO, PETITIONER, VS. PHILIPPINE TRANSMARINE CARRIERS, INC., NORWEGIAN CREW MANAGEMENT A/S, AND CARLOS C. SALINAS, RESPONDENTS.

D E C I S I O N

A. REYES, JR., J.:

The Case

Challenged before the Court via this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 135856 promulgated on June 17, 2015 and October 26, 2015, respectively. The decision and resolution annulled and set aside the decision of the National Labor Relations Commission (NLRC), which upheld the decision of the Labor Arbiter.

The Antecedent Facts

The petitioner is a Filipino seafarer who signed a Contract of Employment[3] with Norwegian Crew Management A/S through its manning agent in the Philippines, Philippine Transmarine Carriers, Inc. (respondents). The petitioner was accepted as an able seaman aboard the vessel "THORSCAPE" for a duration of eight (8) months, receiving a basic monthly salary of US$689.00 on a 44-hour work week, with overtime pay of US$383.00 and vacation leave with pay for ten (10) days per month.[4]

On January 12, 2013, while securing a lifeboat, the petitioner figured in an accident and sustained an injury that affected both of his knees.[5] He was thereafter brought to the Rumah Sakit Port Medical Center in Indonesia where he was diagnosed to be suffering from "ostheoarthritis."[6] He was repatriated for medical reasons on January 29, 2013.

Upon arrival in the Philippines, the petitioner was referred to the Metropolitan Medical Center under the care of the company-designated physician, Dr. Robert D. Lim (Dr. Lim). He thereafter underwent surgery, medication and physical therapy to improve his knee function.

On August 8, 2013, Dr. Lim assessed the disability grading of the petitioner to be "Grade 10 x 2-stretching leg or ligaments of a knee."[7]

The petitioner disagreed with this assessment, and as a result of which, he consulted his personal physician, Dr. Rogelio P. Catapang (Dr. Catapang). On August

10, 2013, Dr. Catapang issued a medical report declaring the petitioner to be permanently unfit in any capacity to resume his sea duties.[8]

After the parties' failure to arrive at an amicable settlement, the petitioner initiated a complaint before the Labor Arbiter for payment of disability benefits including illness allowance and reimbursement of medical expenses, plus damages and attorney's fees.[9]

On January 15, 2014, the Labor Arbiter promulgated its Decision in favor of the petitioner, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding [petitioner] entitled to permanent and total disability benefits and, correspondingly, holding all Respondents jointly and severally liable to pay Complainant (sic) US$90,000 and 2,983.37, or their peso equivalents at the time of payment, plus attorney's fees equal to 10% of the judgment awards.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[10]

Aggrieved, the respondents appealed to the NLRC, which later on affirmed the decision of the Labor Arbiter.

Once again, the respondents were dissatisfied with the judgment. And so, they elevated the case to the Court of Appeals via a petition for certiorari under Rule 65 of the Rules of Court. In granting the petition, the appellate court emphasized that the medical report by the company-designated physician was issued merely two (2) days prior to the medical report of the petitioner's personal physician. By this, the Court of Appeals pointed out that the petitioner "could have signified his desire to resolve the conflict by engaging a third doctor."[11]

However, rather than adopting the medical assessment of the company-designated physician, the Court of Appeals concluded that "[t]he Complaint should have been dismissed for prematurity."[12] Thus, the fallo of the decision reads:

> WHEREFORE, the Petition is GRANTED. The Resolutions dated February 26, 2014 and March 31, 2014 of the National Labor Relations Commission are ANNULLED AND SET ASIDE. Accordingly, the Complaint is DISMISSED.
>
> SO ORDERED.[13]

Upon the denial of the petitioner 's motion for reconsideration, he filed the instant petition.

The Issue

In asking for the reversal of the decision and resolution of the Court of Appeals, the petitioner asks whether or not the decision and resolution are issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The petitioner argues

that: (1) the LA and NLRC Decisions are promulgated on the basis of substantial evidence and could no longer be overturned; (2) the appellate court misappreciated the assessment of the company-designated physician; and (3) there is error when the appellate court reiterated that the n1le on the referral to a third doctor as a method of conflict-resolution is mandatory.[14]

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds partial error in the decision of the Court of Appeals, and thus finds partial merit in the petition.

First, the Court of Appeals is correct in stating that the referral to a third doctor is mandatory, and that the petitioner's failure to abide thereby is a breach of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), which makes the assessment of the company-designated physician final and binding.

According to the case of *Andrada vs. Agemar Manning Agency, Inc.*,[15] the issue of whether the petitioner can legally demand and claim disability benefits from the respondents for an illness suffered is best addressed by the provisions of the POEA-SEC which incorporated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Section 20 thereof provides:

> Section 20 [B]. Compensation and Benefits for Injury or Illness
>
> x x x x
>
> 2. x x x
>
> However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time as he is declared fit or the degree of his disability has been established by the company-designated physician.
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
>
> 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 period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above 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.**[16] (Emphasis and underscoring supplied)

Thus, while it is the company-designated physician who is entrusted with the task of assessing the seafarer's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment,[17] the same is not automatically final, binding or conclusive.[18]

According to *Andrada*,[19] should the seafarer disagree with the assessment, he/she may dispute the same by seasonably exercising his/her prerogative to seek a second opinion and consult a doctor of his/her choice.[20] In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seafarer may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them. This is explicitly stated in Section 20 of the POEA-SEC.

In the seminal case of *Philippine Hammonia Ship Agency, Inc. vs. Dumagdag*,[21] the Court had the opportunity to further elaborate on this method of dispute resolution between two competing opinions of medical experts.

In asking how the foregoing should be resolved, the Court looked into the POEA-SEC and the CBA of the parties as the binding documents which govern the employment relationship between them. The Court said that, while there is nothing inherently wrong in seeking a second opinion on the medical assessment of the seafarer, the latter should not pre-empt the mandated procedure provided for in Section 20 of the POEA-SEC "by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination."[22]

In *Formerly INC Shipmanagement, Inc. vs. Rosales*,[23] the Court further clarified the ruling in *Philippine Hammonia Ship Agency, Inc.*[24] by categorically saying that **the referral to a third doctor is mandatory, and should the seafarer fail to abide by this method, he/she would be in breach of the POEA-SEC, and the assessment of the company-designated physician shall be final and binding**. Thus, the Court said:

> This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, **the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties**. We have followed this rule in a string of cases x x x. (Emphasis supplied)

This is reiterated by the Court m the recent case of *Silagan vs. Southfield Agencies, Inc.*,[25] to wit: