

## SECOND DIVISION

[ G.R. No. 210307, February 22, 2017 ]

**TRADEPHIL SHIPPING AGENCIES, INC.,/GREGORIO F. ORTEGA,  
PETITIONERS, VS. DANTE F. DELA CRUZ, RESPONDENT.**

### DECISION

#### **MENDOZA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the June 28, 2013 Decision<sup>[1]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 125519, as modified in its December 4, 2013 Amended Decision,<sup>[2]</sup> which set aside the April 2, 2012 Decision<sup>[3]</sup> and the May 8, 2012 Resolution<sup>[4]</sup> of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 01-000024-12, a complaint for permanent and total disability benefits by seafarer Dante F. Dela Cruz (*Dela Cruz*).

#### *The Antecedents*

On July 2, 2009, Tradephil Shipping Agencies, Inc. (*Tradephil*) engaged the services of Dela Cruz to work as Ordinary Seaman on board the vessel, "M/V Venus," for a period of nine (9) months with a basic monthly salary of US\$377.00. Upon the expiration of the contract in April 2010, the parties signed a new one for an additional period of six (6) months, or until October 2010. For the extended period, he served as Able Seaman with a basic monthly salary of US\$520.00. Sometime in July 2010, after carrying heavy loads, Dela Cruz complained of pricking pains in his left scrotal area. He reported the matter to the Master of the vessel who gave him medicines for temporary relief. Thereafter, upon the vessel's arrival in Paranagua, Brazil, he was referred to Dr. Filippo Carmosino, who diagnosed him "to be afflicted with 'Varicocele' and recommended 'light work' and 'surgery in your country.'"<sup>[5]</sup>

On September 3, 2010, Dela Cruz was repatriated to the Philippines. Upon his arrival in Manila, he was referred to the company-designated physician, Dr. Esther G. Go (*Dr. Go*) at the Metropolitan Medical Center (*MMC*). On September 6, 2010, Dr. Go diagnosed him to be suffering from "suspicious varicocele, left." On September 14, 2010, Dela Cruz was recommended for operation and was admitted to the hospital on September 22, 2010. The next day, September 23, 2010, he underwent an operation called "Varicocoelectomy, bilateral"<sup>[6]</sup> and was discharged on September 25, 2010.<sup>[7]</sup>

Thereafter, Dela Cruz was entrusted to the care of the company-designated urologist, Dr. Darwin Lim (*Dr. Lim*). After a series of consultation, Dr. Lim examined him on December 29, 2010 because he still felt the on-and-off pains in his scrotal area. Dr. Lim observed that based on his condition at that time, his closest interim assessment was Grade 12 - slight residual disorder. Dela Cruz agreed to a

reevaluation of his condition on January 4, 2011, the earliest date available for Dr. Lim; but for some reason, he missed this appointment with Dr. Lim.<sup>[8]</sup>

On January 6, 2011, Dela Cruz filed his complaint against Tradephil and Gregorio F. Ortega (*Ortega*), being the President of Tradephil, before the Labor Arbiter (*LA*).

On January 7, 2011, Dela Cruz sought the medical opinion of Dr. Manuel C. Jacinto (*Dr. Jacinto*), who issued a medical certificate declaring him "to be physically unfit to go back to work" with a disability rating of "total permanent."<sup>[9]</sup>

On January 17, 2011, or eleven (11) days after the filing of his complaint, Dela Cruz went back to Dr. Lim for consultation and underwent repeat inguinoscrotal ultrasound which revealed normal ultrasound of both testes. On the same date, Dr. Lim declared him fit to work. He, however, refused to sign his certificate of fitness for work because he needed to observe his condition further.<sup>[10]</sup>

On March 10, 2011, during the hearing of the case, Tradephil suggested that the parties refer the matter to a third doctor. This was rejected by Dela Cruz at the hearing on March 15, 2011.<sup>[11]</sup>

#### *The LA Ruling*

In its July 29, 2011 Decision,<sup>[12]</sup> the LA ruled that Dela Cruz was not entitled to disability benefits, explaining that because of the conflicting assessments of the company-designated physician and his own doctor, there should have been a referral to a third doctor, which was, however, refused by Dela Cruz. The LA continued that, with the absence of an assessment coming from an independent third doctor as required by Section 20(B) of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract for Filipino Seafarers (POEA-SEC), the assessment of the company-designated physician, which was arrived at after a series of actual examinations and treatment, would be more credible than the assessment of Dr. Jacinto after a single consultation.

The LA also denied Dela Cruz's claims for moral and exemplary damages. The LA, nevertheless, granted his prayer for sick wages noting that the Tradephil failed to present any evidence to prove that he received his sick wages, whether partially or wholly. For the same reason, the LA granted his claim for attorney's fees in an amount equivalent to 10% of the award for sick wages. The dispositive portion of the LA decision reads:

WHEREFORE, except as to the order for respondents to pay complainant US\$2,080.00 as sick wages (US\$520 x 4 mos.) and US\$208.00 as attorney's fees, judgment is hereby rendered dismissing the case for lack of merit.

SO ORDERED.<sup>[13]</sup>

Both parties elevated their respective appeals to the NLRC.

#### *The NLRC Ruling*

On April 2, 2012, the NLRC *affirmed with modification*, the July 29, 2011 Decision of the LA. It concurred with the LA that the assessment made by Dr. Lim, the company-designated physician, was more credible than the assessment made by Dr. Jacinto. It also dismissed his claim for permanent disability anchored on the failure of the company-designated physician to make a declaration on his fitness within 120 days from the date of his repatriation. Citing the case of *Vergara vs. Hammonia Maritime Service, Inc.*<sup>[14]</sup> (*Vergara*), the NLRC declared that the temporary total disability period of 120 days may be extended to 240 days.

The NLRC, however, modified the LA decision with regard to the award of sick wages and attorney's fees. It noted that in its Memorandum on Appeal, Tradephil attached the vouchers, which were signed by Dela Cruz, acknowledging payment of sick wages for 120 days. The decretal portion of the NLRC decision reads:

WHEREFORE, premises considered, judgment is rendered dismissing the appeal of complainant for lack of merit. Respondent's appeal is GRANTED.

The July 29, 2011 Decision of the Labor Arbiter is hereby MODIFIED by deleting the award for sick wages and attorney's fees. The Decision finding complainant not entitled to disability benefit STAYS.

SO ORDERED.<sup>[15]</sup>

Dela Cruz moved for reconsideration, but his motion was denied by the NLRC in its Resolution, dated May 8, 2012.

Aggrieved, Dela Cruz filed his petition for *certiorari* before the CA.

#### *The CA Ruling*

In its assailed Decision, dated June 28, 2013, the CA *reversed* and *set aside* the ruling of the NLRC. It asserted that the NLRC disregarded the 120-day rule under Section 20(B) of the POEA-SEC when it ruled that Dela Cruz could not claim disability benefits. The CA noted that from the time he was repatriated on September 3, 2010 until he was pronounced fit to resume sea duties on January 17, 2011, one hundred thirty six (136) days had already elapsed. Following Section 20(B) of the POEA-SEC, the CA concluded that he should have been declared totally and permanently disabled as early as January 2, 2011, the 121<sup>st</sup> day from his repatriation. The CA added that *Vergara* had not been consistently applied by the Court. The *fallo* reads:

WHEREFORE, the petition is GRANTED. Setting aside the assailed April 2, 2012 Decision and May 8, 2012 Resolution of the NLRC, the private respondents are hereby directed to pay petitioner his claimed total disability benefits of US\$60,000.00 dollars and ten percent (10%) thereof as attorney's fees.

SO ORDERED.<sup>[16]</sup>

Tradephil moved for reconsideration, but its motion was denied by the CA in its December 4, 2013 Amended Decision. It, however, reduced the award for disability

benefits to US\$5,225.00, with 10% thereof as attorney's fees. In reducing the award, it considered the interim assessment of Grade 12 disability rating made by Dr. Lim on December 29, 2010.

Hence, this petition for review raising the following:

### **ISSUES**

#### **I.**

**The Court of Appeals committed a serious error when it rendered a judgment that is not in accord with the applicable decisions of this Honorable Court.**

#### **II.**

**The Court of Appeals committed a grave error when it reversed the decision of the NLRC and awarded disability benefits and attorney's fees to respondent.<sup>[17]</sup>**

Petitioners Tradephil and Ortega argue that the CA's departure from the ruling in Vergara was in clear violation of the principle of *stare decisis*, which calls for the adherence by lower courts to the doctrinal rules established by the Court.

The petitioners further aver that respondent Dela Cruz had no cause of action when he filed his complaint on January 6, 2011. They assert that, at that time, he was neither assessed by the company-designated physician nor examined by his personal physician.

In his Comment,<sup>[18]</sup> dated April 28, 2014, respondent Dela Cruz countered that the CA correctly decided the case in his favor. He asserted that under the POEA-SEC, the company-designated physician was mandated to make an assessment of the seafarer's fitness for work within 120 days from his repatriation, failing which, he must be declared permanently disabled.

In their Reply,<sup>[19]</sup> dated April 1, 2015, the petitioners reiterated their previous arguments.

From the submissions of the parties, the Court is essentially being tasked to resolve the following issues: (i) whether the doctrine enunciated in *Vergara* applies to this case; and (ii) whether Dela Cruz is entitled to total and permanent disability benefits.

### **The Court's Ruling**

The petition is impressed with merit.

*Vergara has been consistently adhered to by the Court.*

In *Vergara*, the Court clarified that the rule on the failure by the company-designated physician to make a declaration of fitness to work within the 120-day period to constitute permanent total disability should not be applied in all situations.

The specific context of the application should be considered in light of the application of all rulings, laws and implementing regulations. Harmonizing the POEA-SEC provision with Article 192(c)(1), in relation to Rule X, Section 2 of the Rules and Regulations Implementing Book IV of the Labor Code (*IRR*), the Court in *Vergara* held that the treatment of the company-designated physician may be extended up to a maximum of 240 days when circumstances warranted it. Thus:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.<sup>[20]</sup>  
[Emphasis and underscoring supplied]

Despite this holding, the CA reversed the April 2, 2012 NLRC Decision, declaring that the rule enunciated in *Vergara* was inapplicable to the present case as it had not been consistently followed by this Court. It explained that after the promulgation of *Vergara*, the Court still awarded disability compensation benefits on the basis of the 120-day rule.<sup>[21]</sup> This ratiocination is misplaced.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,<sup>[22]</sup> the Court essentially ruled that the 240-day period remained an exception which should not be applied unconditionally. The Court explained that to invoke the 240-day period, the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits as a consequence of such non-compliance. The Court stressed that:

Certainly, the company-designated physician must perform some significant act before he can invoke the exceptional 240-day period under the IRR. It is only fitting that the company-designated physician must provide a sufficient justification to extend the original 120-day period. Otherwise, under the law, the seafarer must be granted the relief of permanent and total disability benefits due to such non-compliance.<sup>[23]</sup>

The above rule was further refined in *Marlow Navigation Philippines, Inc. v. Osias*,<sup>[24]</sup> where the Court declared that:

Hence, as it stands, the current rule provides: (1) that mere inability to work for a period of 120 days does not entitle a seafarer to permanent and total disability benefits; (2) that the determination of the fitness of a