

## FIRST DIVISION

[ G.R. No. 210289, March 20, 2017 ]

**TSM SHIPPING PHILS., INC. AND/OR DAMPSKIBSSELSKABET  
NORDEN A/S AND/OR CAPT. CASTILLO, PETITIONERS, VS.  
LOUIE L. PATIÑO, RESPONDENT.**

### D E C I S I O N

#### **DEL CASTILLO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the July 25, 2013 Decision<sup>[2]</sup> and November 28, 2013 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R SP No. 128415 affirming the October 17, 2012 Decision<sup>[4]</sup> and April 25, 2013 Resolution<sup>[5]</sup> of the National Labor Relations Commission (NLRC), which ordered TSM Shipping Phils., Inc. (TSM), Dampskibsselskabet Norden A/S (DNAS), and Capt. Castillo (collectively petitioners) to pay Louie L. Patiño (respondent) US\$60,000.00 as permanent total disability benefits and 10% thereof as attorney's fees.

#### ***Antecedent Facts***

On January 13, 2010, TSM, for and in behalf of its foreign principal, DNAS, entered into a Contract of Employment<sup>[6]</sup> with respondent for a period of six months as GP2/OS (General Purpose 2/Ordinary Seaman) for the vessel Nord Nightingale.

On May 20, 2010, while working on board the vessel, respondent injured his right hand while securing a mooring rope. He was brought to a medical facility in Istanbul, Turkey, where X-ray showed a fracture on his 5<sup>th</sup> metacarpal bone. Respondent's right hand was placed in a cast and thereafter he was repatriated.

Upon arrival in Manila on May 24, 2010, petitioners referred respondent to the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz), for further treatment. Respondent was also referred to an orthopedic surgeon who recommended surgical operation to correct the malunited fractured metacarpal bone. On June 8, 2010, respondent underwent Open Reduction and Internal Fixation of the fractured 5<sup>th</sup> metacarpal bone at Manila Doctors Hospital.<sup>[7]</sup> He then went through physical therapy.

After extensive medical treatments, therapy, and follow-up examinations, Dr. Cruz, on August 17, 2010, rendered an interim assessment of respondent's disability under the Philippine Overseas Employment Administration - Standard Employment Contract (POEA-SEC),<sup>[8]</sup> at Grade 10, or loss of grasping power for small objects between the fold of the finger of one hand. Despite continuing physical therapy sessions with the company-designated physician, respondent filed on September 8, 2010 a complaint<sup>[9]</sup> with the NLRC against petitioners for total and permanent disability benefits, damages, and attorney's fees. Thereafter, in a Medical Report dated October 11, 2010,<sup>[10]</sup> Dr. Cruz declared respondent to have reached the

maximum medical cure after rendering a final disability rating of Grade 10 on September 29, 2010.<sup>[11]</sup>

On November 19, 2010, respondent consulted Dr. Nicanor Escutin (Dr. Escutin), who assessed him to have permanent disability unfit for sea duty in whatever capacity as a seaman.<sup>[12]</sup> The following were Dr. Escutin's findings:

**DISABILITY RATING:**

Based on the physical examination and supported by laboratory examinations, he injured his right hand while working. His right hand was injured by the mooring rope which he was securing. He sustained a fracture on his 5<sup>th</sup> metacarpal bone. He had medical attention after 2 days. His right hand was placed on a cast and he was repatriated. In Manila, he had another x-ray which showed his 5<sup>th</sup> metacarpal is not aligned properly, so he had operation on his right hand to fix the 5<sup>th</sup> metacarpal. He later on had physical therapy up to the time of examination. He has difficulty in flexing his fingers adequately. His thumb cannot touch his small finger. His grip is weak and cannot hold objects for a long time. His job as a seaman entails constant usage of both his hands. At present, he cannot fully flex his fingers which mean [sic] he cannot hold small objects or turn knobs. He cannot fully perform his job as a seaman. He is not physically fit to perform the job of a seaman.<sup>[13]</sup>

***Proceedings before the Labor Arbiter***

In his position paper, respondent asked for permanent total disability benefits in the sum of US\$80,000.00 under the Associated Marine Officers and Seamen's Union of the Philippines Collective Bargaining Agreement (AMOSUP CBA) since, according to him, he never recovered completely nor returned to his usual duties and responsibilities, as attested by the medical findings of Dr. Escutin, his own physician.

Petitioners, however, claimed that respondent is only entitled to US\$10,075.00 corresponding to Grade 10 disability under the POEA-SEC, as assessed, on the other hand, by Dr. Cruz who made an extensive evaluation of respondent's injury. They maintained that this assessment deserves greater weight than the belated medical report rendered by Dr. Escutin after a single examination on respondent. Petitioners also stressed that respondent cannot claim benefits under the CBA since he has not proven that he is a member of AMOSUP.

In a Decision<sup>[14]</sup> dated April 18, 2012, the Labor Arbiter awarded respondent total and permanent disability benefits under the AMOSUP CBA in the amount of US\$80,000.00, sickness allowance of US\$1,732.00, attorney's fees equivalent to 10% of the award or US\$8,173.20, and moral and exemplary damages of P100,000.00 and P50,000.00, respectively, for the fraud and malice that attended the denial of his claims.

The Labor Arbiter observed that respondent is indeed suffering from a total and permanent disability since his rehabilitation took five months or more than 120 days and there was no offer on the part of petitioners to rehire him. The Labor Arbiter found credible Dr. Escutin's finding that respondent's injury had rendered him inutile as an ordinary seaman and although total disability does not mean absolute

helplessness, his incapacity to work resulted in the impairment of his earning capacity. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents TSM Shipping (Phils.), Inc./Dampskibsselskabet Norden A.S./Capt. Castillo to jointly and severally pay complainant Louie Patiño the amount of EIGHTY NINE THOUSAND EIGHT HUNDRED FIVE US DOLLARS & 20/100 (US\$89,805.20) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his total permanent disability benefits, sickness allowance and attorney's fees.

Respondents are further ordered to pay complainant the amount of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) representing moral and exemplary damages. All other claims are DISMISSED for lack of merit.

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

### ***Proceedings before the National Labor Relations Commission***

On appeal, petitioners attributed serious error to the Labor Arbiter for awarding full disability benefits under the CBA. They argued that an illness which lasted for more than 120 days does not necessarily mean that a seafarer is entitled to full disability benefits, and that the company-designated physician's partial disability grading is still binding and controlling. Further, there was no concrete medical evidence that respondent suffers from a Grade 1 disability and that no third doctor was appointed to resolve any doubts as to the true state of health of respondent. Petitioners also disputed respondent's entitlement to damages and attorney's fees by denying that they acted with malice and fraud.

In a Decision<sup>[16]</sup> dated October 17, 2012, the NLRC agreed with the Labor Arbiter that respondent is entitled to permanent total disability benefits because his injury had rendered him incapable of using his right hand, based on the last medical report of Dr. Cruz, where the latter acknowledged that respondent's right grip is poor. The NLRC ruled that disability should not be understood based on its medical significance but on the loss of earning capacity. It, however, held that respondent cannot claim benefits under the CBA there being no evidence that he was a member of AMOSUP; likewise, it found no basis in awarding attorney's fees and damages after finding that petitioners did not act in bad faith. It, thus, awarded respondent total and permanent disability benefits in the amount of US\$60,000.00 under the POEA-SEC and deleted the award of damages and attorney's fees, thus:

WHEREFORE, the appeal is partly GRANTED. The Decision of the Labor Arbiter dated April 18, 2012 is AFFIRMED with MODIFICATION; finding appellee entitled to permanent disability benefits under the POEA-SEC. Accordingly appellants are ordered to jointly and severally pay appellee the amount of Sixty Thousand US Dollars (US\$60,000.00) or its peso equivalent at the time of payment. The award of attorney's fees is deleted.

The award for moral and exemplary damages are deleted.

SO ORDERED .<sup>[17]</sup>

Both parties filed their respective motions for reconsideration.<sup>[18]</sup> Petitioners, for their part, questioned the NLRC's award despite lack of proof that respondent suffers from a Grade 1 disability. Respondent, on the other hand, maintained that he is covered by the AMOSUP CBA and that petitioners are also liable for damages and attorney's fees in view of their bad faith.

In a Resolution<sup>[19]</sup> dated November 23, 2012, the NLRC denied petitioners' motion for reconsideration. In a subsequent Resolution<sup>[20]</sup> dated April 25, 2013, the NLRC partly granted respondent's motion for reconsideration by reinstating the Labor Arbiter's award of attorney's fees on the ground that he was forced to litigate his claims. The NLRC made the following disposition in its April 25, 2013 Resolution:

WHEREFORE, appellee's motion for reconsideration is PARTLY GRANTED. Our Decision dated October 17, 2012 is Modified in that, respondents-appellants are ordered to pay appellee ten percent (10%) of the award as attorney's fees.

SO ORDERED.<sup>[21]</sup>

### ***Proceedings before the Court of Appeals***

Petitioners filed a Petition for *Certiorari* with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order<sup>[22]</sup> docketed as CA-G.R. SP No. 128415 to enjoin the enforcement/execution of the NLRC judgment. Petitioners attributed grave abuse of discretion on the NLRC in awarding respondent US\$60,000.00 without providing any substantial evidence to prove that he was suffering from Grade 1 disability and for unreasonably awarding attorney's fees despite absence of bad faith on their part.<sup>[23]</sup>

The CA, on July 25, 2013, rendered a Decision<sup>[24]</sup> dismissing the Petition for *Certiorari* and affirming the October 17, 2012 Decision and April 25, 2013 Resolution of the NLRC. The CA agreed with the findings of both the NLRC and Labor Arbiter that respondent is entitled to a Grade 1 or total permanent disability benefit under the POEA-SEC and that the assessment of respondent's chosen physician, Dr. Escutin, is credible. The CA ratiocinated that both labor tribunals did not merely base their findings on the mere lapse of the 120-day threshold period but on respondent's inability to perform the duties for which he was trained to do, resulting in the impairment of his earning capability. Besides, it held that factual findings of these administrative agencies should be accorded great respect, if not finality, if supported by substantial evidence.

Petitioners sought reconsideration<sup>[25]</sup> of this Decision but was denied by the CA in its Resolution<sup>[26]</sup> of November 28, 2013.

### **Issues**

Hence, the present Petition raising the following issues:

1. Whether the Court of Appeals decided in a way not in accord with law or with the applicable decisions of the Supreme Court in affirming the questioned Decision and Resolution of the Court of Appeals [sic] which held herein petitioners liable for a total of US\$60,000.00 as disability benefits despite the glaring fact that the private respondent was declared as merely suffering from

a Grade 10 disability as recommended by the company-designated physician;

2. Whether the sole claim of 'loss of earning capacity' and the '120-day rule' should equate to an award of US\$60,000.00 despite the lack of substantial evidence to support the allegation that he is actually suffering from a Grade 1 disability and despite the undisputed evidence that he was actually suffering from a Grade 10 disability;
3. Whether the medical findings of the company-designated physician should be upheld over that issued by the physician appointed by the private respondent;
4. Whether the Court of Appeals decided in a way not in accord with law or with the applicable decisions of the Supreme Court in affirming the award for 10% attorney's fees despite the fact that the private respondents [sic] failed to prove that herein petitioners acted in bad faith.<sup>[27]</sup>

Petitioners assert that the mere lapse of the 120-day period does not automatically vest an award of full disability benefits and that the assessment of the company designated physician is controlling in measuring the degree of the seafarer's disability. At any rate, the 120-day period may be extended to 240 days if the seafarer requires further medical attention, as in this case. Therefore, the partial disability grading rendered by Dr. Cruz within the 240-day medical treatment prevails over the single and belated opinion of Dr. Escutin. Besides, no referral was made to a third doctor who should have rendered a binding third opinion. There was, thus no basis for respondent to claim total and permanent disability benefits.

Petitioners also insist that the award of attorney's fees had likewise no basis in the absence of any evidence that they acted in bad faith, which brought about this present litigation.

### **Our Ruling**

We find merit in the Petition.

*Respondent's complaint for disability benefits was premature.*

Because of lack of proof that respondent is covered by the AMOSUP CBA, settled is the finding that his entitlement to disability benefits is governed by the POEA-SEC and relevant labor laws, which are deemed written in the contract of employment with petitioners.

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

Art. 192. Permanent total disability.- 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 for in the Rules;

The Rule referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code, which states: