

SECOND DIVISION

[G.R. No. 226766, September 27, 2017]

ORIENTAL SHIPMANAGEMENT CO., INC. AND/OR MOL TANKSHIP MANAGEMENT (EUROPE) LTD. AND/OR RAMON S. HERRERA, PETITIONERS, V. WILLIAM DAVID P. OCANGAS, RESPONDENT.

DECISION

REYES, JR., J:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 135103 dated March 9, 2016, and its and Resolution^[2] dated August 31, 2016, denying the motion for reconsideration thereof. The assailed decision granted the petition for *certiorari* filed by the petitioners, reversed and set aside the Decision^[3] dated January 15, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 09-000805-13, and reinstated the Decision^[4] dated July 23, 2013 issued by the Labor Arbiter (LA) in NLRC NCR Case No. (M) 01-01253-13.

The Antecedent Facts

Respondent William David P. Ocangas was hired by Petitioner MOL Tankship Management (Europe) Ltd., through its local manning agency in the Philippines-Petitioner Oriental Shipmanagement Co., Inc.

Under the employment contract, Respondent was hired as a Pumpman on board the vessel M/T Phoenix Admiral, for a period of nine (9) months, with a basic monthly salary of US\$599.00.^[5]

Prior to his employment, Respondent underwent a pre-employment medical examination (PEME) and was declared fit to work.^[6]

Respondent was deployed on November 29, 2011. His tasks on board include the rebuild and repair of the valves, pumps, and leaks within the cargo system and extended to the maintenance and lubrication of all parts therein, such as glands, bearing, and the breach rods.^[7]

On July 12, 2012, while on duty, Respondent suffered a broken spine and felt extreme pain on his lower back and numbness on his lower extremities, as a result of him having to lift the cover of the ballast pump manually, which he is then preparing for inspection and maintenance.^[8] He was then advised to rest and given pain relievers.^[9]

On August 16, 2012, Respondent was brought to Kozmino, Russia where he was diagnosed to be suffering from "Osteochondrosis, Regiolumbalis." He was then given

proper medication and was advised to seek medical treatment in his home country.
[10]

Respondent's condition did not improve despite medical attention. Thus, on August 20, 2012, Respondent was recommended to be repatriated to obtain further medical treatment.[11]

Upon his repatriation on September 4, 2012, Respondent immediately reported to Petitioner Oriental Shipmanagement Co., Inc., which then referred him to the company's accredited physician at the Marine Medical Services of the Metropolitan Medical Center. After a series of tests, Respondent was found to be suffering from "Central Disc Protrusions L4-L5 and L5-S1, and Minimal Osteophytes, Lumbar vertebrae." [12] Respondent then underwent a series of treatments supervised by company-designated physicians.

On January 23, 2013, Respondent was declared by Dr. William Chuasuan, a company-designated and accredited physician, to have reached the maximum medical cure with Grade 11 disability impediment for 1/3 loss of lifting power and per the Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC) Schedule of Benefits, entitled to US\$7,465.[13]

On January 24, 2013, Respondent filed a Complaint against Petitioner for recovery of permanent total disability benefits, refund of medical expenses, sickness allowance, and claim for damages.[14]

On March 25, 2013, Respondent sought the medical opinion of Dr. Marcelino Cadag, orthopedic surgeon of the Loyola International Multi Specialty Clinics. Dr. Cadag recommended that the Respondent undergo further therapy and diagnosed him to be suffering from "Herniated Nucleus Pulposus L4-L5, L5-S1 with Nerve Root Compression; Lumbar Spondylosis," [15] and as such no longer fit for sea duty or for any work aboard seafaring vessel given his medical condition.

The LA's Decision

On July 23, 2013, the LA rendered his Decision [16] granting the Complaint, *to wit*:

WHEREFORE, premises considered, judgment is hereby rendered declaring the Complainant entitled to permanent and total disability benefit, and, therefore, holding all the Respondents jointly and severally liable to pay the Complainant his full disability benefit in the amount of US\$100,000.00 or their peso equivalent at the time of payment plus attorney's fee equivalent to 10% of the total judgment award.

All other claims are dismissed for lack of merit.

SO ORDERED.. [17]

In his Decision, the LA held that contrary to the allegation of the Petitioners, the company-designated physician does not have the exclusive prerogative in the determination and assessment of the illness and/or injury of the seafarer. As such, the findings of the company-designated physician should not be taken as the only primary consideration, especially where there is a contrary opinion as in the instant case.[18]

All told, the LA ruled that the Respondent was rendered unfit to work as seaman for more than 120 days, by itself, already constitutes permanent total disability and entitles the latter to US\$ 100,000.00 pursuant to their collective bargaining agreement (CBA).^[19]

However, the LA denied the Respondent's claim for medical expenses for failure to substantiate the same. Likewise, finding that the petitioners merely relied on the certification issued by the company-designated physician, the LA denied the claim for moral and exemplary damages.^[20]

Petitioners appealed the July 23, 2013 Decision of the LA to the NLRC, asserting that while they admit liability for Respondent's disability, the latter is entitled only to benefits corresponding to permanent partial disability (Grade 11) as determined by the company-designated physician.^[21]

Petitioners insisted that under the POEA-SEC, the company-designated physician has the primary if not the exclusive authority to assess the seafarer's disability.^[22]

The NLRC's Decision

On January 15, 2014, the NLRC rendered its Decision^[23] granting the appeal, and accordingly reversed and set aside the July 23, 2013 Decision of the LA.

The NLRC stated that initially, the Respondent's complaint for permanent and total disability should have been dismissed for lack of cause of action as at the time it was filed the only assessment that was existing was that of permanent partial disability (Grade 11) as determined by the company-designated physician. It noted that the Respondent secured a certification from Dr. Marcelino Cadag attesting to his permanent total disability two (2) months after the filing of the Complaint.^[24]

Furthermore, the NLRC claimed that even if it considers the medical certificate issued by the Respondent's doctor, it is still bound to uphold the Grade 11 disability assessment of the company-designated physician, as the latter is in a far better position to assess the Respondent who has been under his care and treatment from the time of the latter was repatriated on September 4, 2012 until January 23, 2012 when the assessment was issued.^[25]

The NLRC also ruled that contrary to the LA's determination, the mere fact that more than 120 days elapsed since the Respondent's repatriation without him resuming from work as a seafarer does not automatically warrant the award of permanent total (Grade 1) disability benefits.^[26]

Respondent filed motion for reconsideration of the said Decision but the same was denied by the NLRC in its March 24, 2014 Resolution^[27]

Respondent then filed a petition for *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion in ruling that he has no cause of action, in finding that he is merely entitled to Grade 11 disability benefits, and in not awarding attorney's fees and damages.

The CA's Decision

On March 9, 2016, the CA rendered the herein assailed Decision^[28] which granted the petition for *certiorari* filed by the Respondent. The CA held that the primordial consideration in determining whether the disability is total and permanent rests on evidence establishing that the seafarer's continuous inability to work due to a work-related illness is for a period of more than 120 days.^[29]

According to the CA, the NLRC closed its eyes to the fact that since Respondent was repatriated on September 4, 2012 up to the time he filed his complaint on January 24, 2013, more than 120 days has elapsed during which the Respondent was medically treated and unable to perform his duties as pumpman on board any sea vessel.^[30]

Moreover, the CA declared that the NLRC erred in relying fully with the company-designated physician's assessment, as it is settled that the latter's findings are not binding on the labor tribunals and the courts.^[31]

Petitioners sought a reconsideration of the March 9, 2016 Decision but the CA denied it in its Resolution^[32] dated August 31, 2016.

Issues

In the instant petition, Petitioners submit the following issues for this Court's resolution:

DID THE COURT OF APPEALS COMMIT SERIOUS, GRAVE AND PATENT ERRORS IN REVERSING AND SETTING ASIDE THE DECISION OF THE NLRC AND REINSTATING THE LA'S ERRONEOUS AWARD IN FAVOR OF RESPONDENT OCANGAS OF FULL DISABILITY BENEFITS, CONTRARY TO THE RELEVANT LAW, RULE AND JURISPRUDENCE?^[33]

The Court's Ruling

The petition is meritorious.

It bears to stress at the outset that there is no issue as to the compensability of Respondent's injury as the parties do not dispute that the same is work-related. What remains to be resolved in the instant petition is whether Respondent is entitled to the payment of permanent total disability benefits or to that which corresponds to Grade 11 disability in accordance with the assessment of the company-designated physician.

The CA, in ruling that the Respondent suffered permanent total disability relied primarily on the cases of *Crystal Shipping, Inc. v. Natividad*,^[34] *Philimare, Inc. v. Suganob*,^[35] *Micronesia Resources v. Cantomayor*,^[36] and *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*.^[37] The last three cases were decided within the purview of the doctrine laid down in *Crystal Shipping* that permanent and total disability consists mainly in the inability of the seafarer to perform his customary work for more than 120 days.

Notably, as elucidated in the case of *Splash Philippines Inc., et al. v. Ruizo*,^[38] the ruling in *Crystal Shipping* has already been modified in that the doctrine laid down therein cannot simply be lifted and applied as a general rule for all cases in all contexts.

Thus, the Court clarified and delineated in *Kestrel Shipping Co. Inc. v. Munar*,^[39] that if the complaint for maritime disability compensation was filed prior to October 6, 2008, the 120-day rule enunciated in *Crystal Shipping* applies. However, if such complaint was filed from October 6, 2008 onwards, as in the case at bar where the Complaint was filed by the Respondent on January 24, 2013, the 240-day rule provided in the case of *Splash Philippines, Inc.* and clarified in the case of *Vergara v. Hammonia Maritime Services Inc.*,^[40] applies.

Insofar as cases covered by the 240-day rule, the Court has repeatedly emphasized that the determination of the rights of seafarers to compensation for disability benefits depends not solely on the provisions of the POEA-SEC but likewise by the parties' contractual obligations set forth under their CBA, the attendant medical findings, and relevant Philippine laws and rules.^[41]

Pertinent to the entitlement of a seafarer to permanent and total disability benefits, Section 20(A) of the POEA-SEC provides:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

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 period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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.

x x x x