

## THIRD DIVISION

**[ G.R. No. 206113, November 06, 2017 ]**

**SHARPE SEA PERSONNEL, INC., MONTE CARLO SHIPPING, AND  
MOISES R. FLOREM, JR., PETITIONERS, V. MACARIO MABUNAY,  
JR., RESPONDENT.**

### D E C I S I O N

**LEONEN, J.:**

The company-designated physicians' failure to arrive at a final and definite assessment of a seafarer's fitness to work or level of disability within the prescribed periods means that the seafarer shall be deemed to be totally and permanently disabled.

This resolves the Petition for Review on Certiorari<sup>[1]</sup> filed by petitioners Sharpe Sea Personnel, Inc. (Sharpe Sea), Monte Carlo Shipping (Monte Carlo) and Moises R. Florem, Jr. (Florem) assailing the Court of Appeals October 24, 2012 Decision<sup>[2]</sup> and March 8, 2013 Resolution<sup>[3]</sup> in CA-G.R. SP No. 123318. The Court of Appeals reversed the National Labor Relations Commission November 29, 2011 Resolution<sup>[4]</sup> in NLRC NCR Case No. OFW(M)01-01153-10 (NLRC LAC No. OFW(M)11-000929-10).

On March 23, 2009, Macario G. Mabunay, Jr. (Mabunay) entered into a contract of employment<sup>[5]</sup> with Sharpe Sea, an agent for C.F. Sharp & Company Pte. Ltd/Monte Carlo.<sup>[6]</sup> Sharpe Sea was represented by its fleet manager, Florem.<sup>[7]</sup> Mabunay was hired as an oiler for a period of nine (9) months aboard M/V Larisa, with a total monthly salary of US\$1,083.00.<sup>[8]</sup>

On April 14, 2009, Mabunay boarded M/V Larisa.<sup>[9]</sup>

The following day, Mabunay slipped and hit his back on the purifier, while he was cleaning the second floor of the engine room. He lost consciousness when he fell and when he awoke, his back was numb and he had difficulty getting up. <sup>[10]</sup>

That night, Mabunay informed a certain 2<sup>nd</sup> Engineer Castro of his accident . However, 2<sup>nd</sup> Engineer Castro directed him to continue with his assigned duties.<sup>[11]</sup>

Despite the persistent pain in his back and numbness in his legs, Mabunay continued working from April 16, 2009 to April 18, 2009, until Chief Engineer Manuel De Leon allowed him to have a medical checkup when the ship docked in Nanjing, China.<sup>[12]</sup>

On April 23, 2009, Mabunay was brought to Nanjing Hospital for a medical checkup and he was diagnosed with chest and spinal column bone damage. He was declared unfit to work by his attending physician.<sup>[13]</sup>

On April 29, 2009, Mabunay was medically repatriated to Manila.<sup>[14]</sup>

On April 30, 2009, Mabunay reported to Sharpe Sea's office and was told to report to Dr. Nicomedes G. Cruz (Dr. Cruz), a company-designated physician.<sup>[15]</sup>

From April 30, 2009 to June 3, 2009,<sup>[16]</sup> Mabunay was confined at Manila Doctors Hospital. He was diagnosed with "Cervical Spondylosis, C4C5; Thoracolumbar Spondylosis; and Mild chronic compression fracture of T12 & L1 vertebral bodies."<sup>[17]</sup> He was provided with a cervical collar and lumbosacral corset, told to continue his physical therapy, and advised to come back on July 7, 2009 for further checkup.<sup>[18]</sup>

On August 14, 2009, after it was noted that Mabunay was not responding to physical therapy, Dr. Cruz recommended that Mabunay undergo a discectomy "for decompression of cervical area with fusion and bone grafting and fixation of cervical plates and screws."<sup>[19]</sup>

On November 24, 2009, Mabunay underwent surgery and Dr. Cruz observed that Mabunay "tolerated the procedure well."<sup>[20]</sup>

On December 5, 2009, Mabunay was discharged from the hospital.<sup>[21]</sup>

On January 21, 2010, Mabunay filed a complaint<sup>[22]</sup> against Sharpe Sea, Monte Carlo, and Florem for the payment of his medical expenses, total disability benefits, damages, and attorney's fees.

On June 3, 2010,<sup>[23]</sup> Mabunay sought the opinion of Dr. Alan Leonardo R. Raymundo (Dr. Raymundo), an orthopedic surgeon, who diagnosed him with "herniated disc, C4-C5" and opined that he was unfit to work as a seaman in his present condition:<sup>[24]</sup>

#### **DIAGNOSIS; HERNIATED DISC, C4-C5**

##### **RECOMMENDATION:**

I have advised the patient that to this present orthopedic condition, he is not fit to return to work as a seaman.<sup>[25]</sup>

On July 2, 2010, Mabunay sought the opinion of another orthopedic surgeon, Dr. Rommel F. Fernando (Dr. Fernando) who also found him unfit to work:

This is to certify that MACARIO MABUNAY 32M is under my care for:

Cervical Stenosis s/p C4 partial corpectomy, C3-C5 anterior fusion (Nov 2009) Rule out Adjacent Segment Cervical Stenosis Lumbar Stenosis with Neurogenic Claudication (15 nerve root)

His current condition and predicament makes him UNFIT TO WORK until such time as further work ups (MRI, repeat xrays, etc) can be done to better establish the cause of his symptoms and treat him accordingly.<sup>[26]</sup>

On September 14, 2010, the Labor Arbiter<sup>[27]</sup> ruled in Mabunay's favor and directed Sharpe Sea to pay him permanent and total disability benefits.

The Labor Arbiter concluded that the company-designated physicians and Mabunay's personal physicians found that he was unfit for sea duty because he still needed regular medical checkups and treatment.<sup>[28]</sup>

The Labor Arbiter rejected Sharpe Sea's claim that its company-designated physicians assessed Mabunay with a disability rating of Grade 8 since it was not supported by the records.<sup>[29]</sup>

The Labor Arbiter emphasized that from April 23, 2009, when Mabunay was found unable to work by his attending physician in Nanjing Hospital, up to July 2, 2010, when Dr. Fernando examined him and still found him unable to work, more than 240 days had already elapsed.<sup>[30]</sup> Nonetheless, the Labor Arbiter pointed out that even if Mabunay's personal physicians' assessment were disregarded, Mabunay had proven that he was unable to perform his function as an oiler for more than 120 days. This already constituted permanent disability, which would merit the award of total and permanent disability benefits.<sup>[31]</sup> However, the Labor Arbiter denied Mabunay's claims for medical expenses and future medical expenses for being bereft of factual bases.<sup>[32]</sup>

The Labor Arbiter also dismissed Sharpe Sea's argument that it should no longer be held liable for any claims against it in light of the Affidavit of Assumption of Responsibility<sup>[33]</sup> it executed with Benhur Shipping Corporation (Benhur). The Labor Arbiter stated that Mabunay was not privy to the agreement between Sharpe Sea and Benhur, which happened after Mabunay signed his contract of employment; hence, Sharpe Sea should still be held liable for the award in Mabunay's favor.<sup>[34]</sup>

The dispositive portion of the Labor Arbiter Decision read:

**WHEREFORE**, in light of the foregoing, judgment is hereby rendered ordering respondent **SHARPE SEA PERSONNEL, INC.** to pay complainant Macario G. Mabunay, Jr. the amount of **SIXTY THOUSAND US DOLLARS (US\$60,000.00)** for permanent and total disability benefits plus ten percent (10%) thereof as attorney's fees. ,

Other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.

**SO ORDERED.**<sup>[35]</sup> (Emphasis in the original)

Both Sharpe Sea and Mabunay filed their respective memoranda on appeal<sup>[36]</sup> to the Labor Arbiter Decision.

On June 22, 2011, the National Labor Relations Commission (NLRC)<sup>[37]</sup> affirmed with modification the Labor Arbiter Decision by deleting the award for attorney's fees.

The NLRC upheld the Labor Arbiter's finding that the records were bereft of evidence to support Sharpe Sea's claim that its company designated physicians gave Mabunay a disability rating of Grade 8.<sup>[38]</sup> In contrast, Mabunay adequately proved that his private physicians both assessed him to be unfit for work.<sup>[39]</sup>

However, the NLRC dismissed Mabunay's claims for reimbursement of medical expenses and future medical expenses because, aside from the computations he himself or his private physicians prepared, he was unable to substantially corroborate his claim of medical expenses.<sup>[40]</sup> The NLRC likewise dismissed Mabunay's claims for moral damages and attorney's fees.<sup>[41]</sup>

Finally, the NLRC ruled that Florem, Sharpe Sea's fleet manager, cannot be held personally liable in the absence of evidence that he had a direct hand in denying Mabunay's disability claims.<sup>[42]</sup>

The *fallo* of the NLRC Decision read:

WHEREFORE, the instant appeal of the respondents is PARTLY GRANTED and complainant's partial appeal is DISMISSED. Accordingly, the Decision of the Labor Arbiter dated September 14, 2010 is AFFIRMED but modified insofar as that the attorney's fees [are] deleted for lack of merit.

SO ORDERED.<sup>[43]</sup>

Both Sharpe Sea and Mabunay moved to reconsider<sup>[44]</sup> the NLRC Decision.

On November 29, 2011, the NLRC modified<sup>[45]</sup> its June 22, 2011 decision by reducing the award of US\$60,000.00 it earlier granted to Mabunay, to US\$16,795.00, corresponding to a Grade 8 disability rating.<sup>[46]</sup>

The NLRC noted that Sharpe Sea attached a medical report dated August 18, 2009 from Dr. Cruz, which supported its claim that a company-designated physician had diagnosed Mabunay with a Grade 8 disability.<sup>[47]</sup>

The NLRC pointed out that while Dr. Cruz's medical report might not have been presented before the Labor Arbiter, it was not disputed that Mabunay was under the care of Dr. Cruz from the time he was medically repatriated.<sup>[48]</sup>

The NLRC likewise stated that *NYK-Fil Ship Management, Inc. v. Talavera* upheld the award of a Grade 8 disability benefit for a spinal injury similar to Mabunay's.<sup>[49]</sup>

The *fallo* of the NLRC Resolution read:

WHEREFORE, premises considered, the Decision of this Commission is MODIFIED. Complainant Macario Mabunay, Jr. is declared to be entitled only to US\$16,795.00 corresponding to Grade 8 disability grading under the POEA Standard Employment Contract. Complainant is likewise awarded attorney's fees corresponding to ten percent (10%) of said award.

**SO ORDERED.**<sup>[50]</sup> (Emphasis in the original)

Mabunay filed a Petition for Certiorari<sup>[51]</sup> with the Court of Appeals, assailing the June 22, 2011 Decision and November 29, 2011 Resolution of the NLRC.

On October 24, 2012, the Court of Appeals<sup>[52]</sup> partially granted Mabunay's Petition.

The Court of Appeals ruled that Sharpe Sea failed to adequately explain why it only submitted the medical report with the Grade 8 disability rating in its Motion for Reconsideration of the NLRC Decision. It rebuked the NLRC for failing to rule on the admissibility of the belatedly filed evidence.<sup>[53]</sup>

The Court of Appeals also ruled that Mabunay was entitled to attorney's fees, moral, and exemplary damages since Sharpe Sea acted with bad faith in belatedly submitting a Grade 8 disability rating.<sup>[54]</sup> Finally, it granted Mabunay's claim for actual expenses in the form of transportation expenses, magnetic resonance imaging, and doctor's fees since they were adequately supported with receipts.<sup>[55]</sup>

The *fallo* of the Court of Appeals Decision read:

**ACCORDINGLY**, the petition is **PARTLY GRANTED**. The Decision dated September 14, 2010 of Labor Arbiter Lutricia Quitevis-Alconcel in NLRC NCR Case No. OFW (M)-01-01153-10 is **REINSTATED** with **MODIFICATION AWARDING** petitioner Macario Mabunay, Jr. P50,000.00 as moral damages, P50,000.00 as exemplary damages, P36,305.00 as transportation expenses, and P7,300.00 as MRI expenses.

**SO ORDERED.**<sup>[56]</sup> (Emphasis in the original)

On March 8, 2013, the Court of Appeals<sup>[57]</sup> denied Sharpe Sea's Motion for Reconsideration.<sup>[58]</sup>

On April 12, 2013, petitioners filed their Petition for Review on Certiorari before this Court.<sup>[59]</sup>

In the Petition, petitioner Sharpe Sea states that its co-petitioner Monte Carlo is no longer its principal and that the other co-petitioner Florem is no longer its employee.<sup>[60]</sup>

Petitioners claim that under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), for a disability compensation to be validly awarded, the illness or injury must have been suffered during the seafarer's employment, with a company-designated physician determining his disability rating.<sup>[61]</sup> They point out that respondent has signed this contract.

Petitioners insist that the Court of Appeals erred in disregarding the Grade 8 disability rating given to respondent by Dr. Cruz, since this had the effect of disregarding the terms and conditions of the POEA-SEC.<sup>[62]</sup>

Petitioners assert that a seafarer's inability to perform his job for more than 120 days cannot be found in the POEA-SEC, the law between the contracting parties. Instead, it is the POEA-SEC itself that provides the requisites for the determination and award of disability compensation.<sup>[63]</sup> Petitioners posit that Article 192(c)(i) of the Labor Code, which provides for total and permanent disability if the worker is unable to perform his job for more than 120 days, is only applicable to claims before the Employees Compensation Commission and not to claims covered by the POEA-SEC.<sup>[64]</sup>

Furthermore, petitioners likewise assert that the POEA-SEC mandates a company-designated physician to conduct the medical evaluation and provide the disability