784 Phil. 203

THIRD DIVISION

[G.R. No. 212382, April 06, 2016]

SCANMAR MARITIME SERVICES, INCORPORATED, CROWN SHIPMANAGEMENT INC., LOUIS DREYFUS ARMATEURS AND M/T ILE DE BREHAT AND/OR MR. EDGARDO CANOZA, PETITIONERS, VS. EMILIO CONAG, RESPONDENT.

DECISION

REYES, J.:

This is a Petition for Review on [1] from the Decision[2] dated January 27, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 119282, which reversed the Decision[3] dated November 30, 2010 of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW(M) 09-000666-10 and ordered the reinstatement of the Decision[4] of the Labor Arbiter (LA) dated July 8, 2010 in NLRC RAB NCR Case No. (M) 02-02666-10.

Since 2002, respondent Emilio A. Conag (Conag) had been deployed annually by petitioner Scanmar Maritime Services, Inc. (Scanmar) as a bosun's mate aboard foreign vessels owned or operated by its principal, Crown Ship Management, Inc./Louis Dreyfus Armateurs SAS (Crown Ship). On March 27, 2009, he was again deployed as a bosun's mate aboard the vessel *M/T Ile de Brehat*. According to him, his job entailed lifting heavy loads and occasionally, he would skid and fall while at work on deck. On June 19, 2009, as he was going about his deck duties, he felt numbness in his hip and back. He was given pain relievers but the relief was temporary. Two months later, the pain recurred with more intensity, and on August 18, 2009 he was brought to a hospital in Tunisia.[5]

On August 25, 2009, Conag was medically repatriated. Upon arrival in Manila on August 27, 2009, he was referred to the company-designated physicians at the Metropolitan Medical Center (MMC), Marine Medical Services, where he was examined and subjected to laboratory examinations.[6]

The laboratory tests showed that Conag had "*Mild Lumbar Levoconvex Scoliosis and Spondylosis; Right S1 Nerve Root Compression*," with an incidental finding of "*Gall Bladder Polyposis v. Cholesterolosis*"[7] For over a period of 95 days, he was treated by the company-designated physicians, Drs. Robert Lim (Dr. Lim) and Esther G. Go (Dr. Go), and in their final medical report[8] dated December 1, 2009, they declared Conag fit to resume sea duties. Later that, day, Conag signed a Certificate of Fitness for Work,[9] written in English and Filipino. Conag claimed that he was required to sign the certificate as a condition *sine qua non* for the release of his accumulated sick pay.[10] According to him, however, his condition deteriorated while he was undergoing treatment. On February 18, 2010, he filed a complaint against Scanmar, Crown Ship and Edgardo Canoza (collectively, petitioners) seeking full and

permanent disability benefits, among others. He also consulted another doctor, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto), at Sta. Teresita General Hospital in Quezon City, who on March 20, 2010 issued a certificate stating that his "condition did not improve despite medicine and that his symptoms aggravated due to his work which entails carrying of heavy loads."[11] Dr. Jacinto then assessed Conag as unfit to go back to work as a seafarer.[12]

Ruling of the LA

In its Decision[13] dated July 8, 2010, the LA held that the disability assessment of Dr. Jacinto was reflective of Conag's actual medical and physical condition.[14] Citing *Maunlad Transport Inc., and/or Nippon Merchant Marine Company, Ltd., Inc. v. Manigo, Jr.*,[15] the LA ruled that the medical reports presented by the parties are not binding upon the arbitration tribunal, but must be evaluated on their inherent merit, and that the declaration of fitness by the company-designated physicians may be overcome by superior evidence.[16] In particular, the LA noted that during the arbitration proceedings, Conag appeared to be clearly physically unfit to resume sea duties on account of his spinal injuries.[17] As for the certificate of fitness to work Conag signed, the LA ruled it out for being an invalid waiver.[18] The *fallo* of the LA decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering [Scanmar] and/or [Crown Ship] to pay [Conag] the Philippine peso equivalent at the time of actual payment of **ONE HUNDRED EIGHTEEN THOUSAND EIGHT HUNDRED US DOLLARS (US$118,800)**, representing permanent disability benefits in accordance with the Collective Bargaining Agreement, plus ten [percent] (10%) thereof as and for attorney's fees.
>
> All other claims are hereby ordered dismissed for lack of merit.
>
> SO ORDERED.[19]

Ruling of the NLRC

On appeal by the petitioners, the NLRC in its Decision[20] dated November 30, 2010, dismissed Conag's complaint for lack of merit. It took note that Conag failed to comply with the Philippine Overseas Employment Administration - Standard Employment Contract (POEA-SEC) requirement on the appointment of a neutral physician in case of disagreement as to his disability assessment.[21] The NLRC nevertheless ruled that even without the opinion of a third doctor jointly chosen by the parties, any ruling will have to be based on the evidence on record,[22] pursuant to *Nisda v. Sea Serve Maritime Agency, et al*.[23] It concluded that Conag's evidence was inadequate to overcome the assessment of fitness by the company-designated physicians. The NLRC pointed out that Conag was under the care of the company-designated physicians from the time of his repatriation on August 27, 2009 until he was declared fit to work on December 1, 2009. The company-designated physicians were able to show the detailed procedures and laboratory tests done on Conag. On the other hand, Dr. Jacinto's medical certificate did not specify the dates when he saw and treated Conag, nor the diagnostic and laboratory tests he conducted and

the specific treatments and medications he administered, if any, in arriving at his conclusion that the latter suffered from "*Herniated Nucleus Pulposus, L5-S1, Right*," and was now unfit to work.[24]

The petitioners' motion for reconsideration was denied by the NLRC in its Resolution[25] dated February 28, 2011.

Ruling of the CA

In upholding the LA decision, the CA found "undisputed" evidence that Conag suffered from spinal injuries which caused his total disability, discrediting as without basis the NLRC's dismissal of Dr. Jacinto's assessment. That he was not rehired by the petitioners is a telling proof, the CA said, of his unfitness for sea duties, after having assessed him as fit to go back to work.[26]

On motion for reconsideration,[27] the petitioners tried to show, to no avail, that the award of disability benefits to Conag is without basis because there is no proof that his claimed spinal injury was work-related, since he could point to no incident on board which could have caused it. They claimed that he was declared fit to work by the company-designated physicians pursuant to the provisions of the POEA-SEC, to which he was bound. They further averred that, granting he was permanently disabled, as a bosun's mate, Conag was classified as "rating" only and not a junior officer; and he is thus entitled only to $89,100.00 in disability benefits under the Collective Bargaining Agreement (CBA). They also claimed that the CA's reliance on the 120-day rule in the treatment of seafarers is misplaced and attorney's fees cannot be awarded because they are fully justified in denying disability benefits to Conag.

Grounds

In this petition for review on *certiorari*, the petitioners basically reiterate the same grounds they had raised before the CA, to wit:

1. Whether the [CA] committed serious, reversible error of law in disregarding the medical findings of the company-designated physician[s] and awarding full disability compensation under the CBA.

2. Whether the [CA] committed serious, reversible error of law in invoking the 120-day [rule]. The [CA's] reliance on the 120-day [rule] is misplaced. Mere inability to work for more than 120 days does not of itself [entitle] [Conag] to full disability compensation.

3. Whether the [CA] erred in awarding attorney's fees in favor of [Conag] despite justified refusal to pay full and permanent benefits. [28]

Essentially, the petitioners seek to belie the conclusion of the CA that the NLRC's determination of Conag's permanent total disability is not borne out by the evidence. In effect, the Court was asked to make an inquiry into the contrary factual findings of the NLRC and the LA, whose statutory function is to make factual

findings based on the evidence on record.[29] Crucial, then, to a ruling on the above issue is whether the CA was justified in finding that, contrary to the NLRC's conclusion, Conag suffered a work-related spinal injury which rendered him unfit to return to work.

Ruling of the Court

The Court grants the petition.

In appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases.[30] But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting findings,[31] as the Court has found in this case.

Seafarer's right to disability benefits

The relevant legal provisions governing a seafarer's right to disability benefits, in addition to the parties' contract and medical findings,[32] are Articles 191 to 193 of the Labor Code and Section 2, Rule X of the Amended Rules on Employee Compensation. The pertinent contracts are the POEA-SEC, the CBA, if any, and the employment agreement between the seafarer and his employer.[33] To summarize and harmonize the pertinent provisions on the establishment of a seafarer's claim to disability benefits, the Court held in *Vergara v. Hammonia Maritime Services, Inc., et al.*[34] that:

> [T]he 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 [-SEC] 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.[35] (Citations omitted and italics in the original)

In *C.F. Sharp Crew Management, Inc., et al. v. Taok*,[36] the Court enumerated the conditions which may be the basis for a seafarer's action for total and permanent disability benefits, as follows:

> (a) [T]he company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of

> the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (i) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[37]

Incidentally, in the recent case of *Magsaysay Maritime Corporation v. Simbajon*,[38] the Court has mentioned that an amendment to Section 20-A(6) of the POEA-SEC, contained in POEA Memorandum Circular No. 10, series of 2010,[39] now "finally clarifies" that "[f]or work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor."[40]

Conag failed to comply with Section 20-B(3) of the POEA-SEC

On December 1, 2009, after 95 days of therapy, Conag was pronounced by the company-designated doctors as fit to work. Later that day, he executed a certificate, in both English and Filipino, acknowledging that he was now fit to work. On December 5, 2009, he left for his home province of Negros Oriental, as he told his employers in his letter[41] dated February 9, 2010, wherein he expressed his desire to be redeployed. He told them that during his vacation he was able to engage in a lot of activities such as walking around his neighborhood four times a week, swimming two times a week, weightlifting three times a week, driving his car on Saturdays for one hour, riding his motorbike five times a week, playing basketball every Sunday, and fishing and doing some house repairs when he had the time.

Interestingly, however, on February 18, 2010,[42] a mere nine days after his letter, Conag filed his complaint with the LA for disability benefits, presumably after he was told that he would not be rehired, although the reasons for his rejection are