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SPECIAL FIRST DIVISION

[G.R. No. 215551, August 17, 2016]

JAKERSON G. GARGALLO, PETITIONER, VS. DOHLE SEAFRONT CREWING (MANILA), INC., DOHLE MANNING AGENCIES, INC., AND MR. MAYRONILO B. PADIZ, RESPONDENTS.

R E S O L U T I O N

PERLAS-BERNABE, J.:

For the Court's resolution are the Motion for Reconsideration[1] and Motion for Partial Reconsideration[2] filed by petitioner Jakerson G. Gargallo (petitioner), and respondents Dohle Seafront Crewing (Manila), Inc. (Dohle Seafront), Dohle Manning Agencies, Inc. (Dohle Manning), and Mr. Mayronilo B. Padiz (Padiz; collectively, respondents), respectively, of the Court's Decision[3] dated September 16, 2015, which affirmed the Decision[4] dated June 10, 2014 and the Resolution[5] dated November 21, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 130266, dismissing petitioner's claim for permanent total disability benefits, but ordered respondents Dohle Seafront and Dohle Manning, jointly and severally, to pay petitioner his income benefit for one hundred ninety-four (194) days, plus 10% of the total amount of the income benefit as attorney's fees.

The Facts

On July 20, 2012, petitioner filed a complaint for permanent total disability benefits against respondents before the National Labor Relations Commission (NLRC).[6] The complaint stemmed from his claim that: (*a*) he accidentally fell on deck while lifting heavy loads of lube oil drum, with his left arm hitting the floor first, bearing his full body weight;[7] (*b*) he has remained permanently unfit for further sea service despite major surgery and further treatment by the company-designated physicians;[8] and (*c*) his permanent total unfitness to work was duly certified by his chosen physician whose certification must prevail over the palpably self-serving and biased assessment of the company-designated physicians.[9]

For their part, respondents countered that the fit-to-work findings of the company-designated physicians must prevail over that of petitioner's independent doctor, considering that: (*a*) they were the ones who continuously treated and monitored petitioner's medical condition; and (*b*) petitioner failed to comply with the conflict-resolution procedure under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC). Respondents further averred that the filing of the disability claim was premature since petitioner was still undergoing medical treatment within the allowable 240-day period at the time the complaint was filed.[10]

The Labor Arbiter (LA)[11] and the NLRC[12] gave more credence to the medical report of petitioner's independent doctor and, thus, granted petitioner's disability claim, and ordered respondents to jointly and severally pay petitioner his permanent total disability benefits, albeit at different amounts.[13]

However, the CA disagreed with the conclusions of the LA and the NLRC, and dismissed petitioner's complaint.[14] It ruled that the claim was premature because at the time the complaint was filed: (*a*) petitioner was still under medical treatment by the company-designated physicians; (*b*) no medical assessment has yet been issued by the company-designated physicians as to his fitness or disability since the allowable 240-day treatment period during which he is considered under temporary total disability has not yet lapsed; and (*c*) petitioner has not yet consulted his own doctor, hence, had no sufficient basis to prove his incapacity.[15] The CA likewise gave more credence to the fit to work assessment of the company-designated physician who treated and closely monitored petitioner's condition, over the contrary declaration of petitioner's doctor who attended to him only once, two (2) months after the filing of the complaint.[16]

In its September 16, 2015 Decision, the Court upheld the CA's dismissal of petitioner's claim for permanent total disability benefits, but ordered Dohle Seafront and Dohle Manning, jointly and severally, to pay petitioner the income benefit arising from his temporary total disability which lasted for 194 days from his repatriation on March 11, 2012 until his last visit to the company-designated physician on September 21, 2012[17] (the date when he was declared fit to work) [18] plus 10% of the total amount of the income benefit as attorney's fees.[19] Meanwhile, the Court found no basis hold Padiz solidarity liable with Dohle Seafront and Dohle Manning for payment of the monetary awards to petitioner, absent any showing that acted beyond the scope of his authority or with malice.[20]

Dissatisfied, both parties filed their respective motions for reconsideration of the Court's September 16, 2015 Decision.[21]

I. Petitioner's Motion for Reconsideration

At the outset, the Court notes that, except as to the issue of respondents' liability for the payment of income benefit, the arguments propounded in petitioner's Motion for Reconsideration had been adequately passed upon in its September 16, 2015 Decision. In essence, petitioner argues that: (*a*) the lapse of the 120-day period from the onset of disability rendered him permanently and totally disabled because the extension of the medical treatment was unjustified;[22] and (*b*) resort to a third doctor is am directory, not a mandatory requirement.[23]

Such arguments remain untenable.

The Court had already disposed of the foregoing matters in its September 16, 2015 Decision, dismissing the complaint on the grounds of: (*a*) premature filing; and (*b*) failure to comply with the mandated conflict-resolution procedure under the POEA-SEC, *viz*.:

It is undisputed that petitioner was repatriated on March 11, 2012 and immediately subjected to medical treatment. Despite the lapse of the initial 120-day period on July 9, 2012, such treatment continued due to persistent pain complained of by petitioner, which was observed until his 180th day of treatment on September 7, 2012. In this relation, the CA correctly ruled that the tiling of the complaint for permanent total disability benefits on July 20, 2012 was premature, and should have been dismissed for lack of cause of action, considering that at that time: (*a*) petitioner was still under the medical treatment of the company-designated physicians within the allowable 240-day period; (*b*) the latter had not yet issued any assessment as to his fitness or disability; and (*c*) petitioner had not yet secured any assessment from his chosen physician, whom he consulted only more than two (2) months thereafter, or on October 2, 2012.

Moreover, petitioner failed to comply with the prescribed procedure under the afore-quoted Section 20 (A) (3) of the 2010 POEA-SEC on the joint appointment by the parties of a third doctor, in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. The [2008-2011 ver.di. IMEC IBF CBA (IBF CBA)] similarly outlined the procedure, *viz*.:

> 25.2 The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
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> xxxx
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> 25.4. A seafarer whose disability, in accordance with 25.2 above is assessed at 50% or more shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to 100% compensation. Furthermore, any seafarer assessed at less than 50% disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to 100% compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 25.2 above.

In the recent case of *Veritas Maritime Corporation v. Gepanaga, Jr.* [(see G.R. No. 206285, February 4, 2015, 750 SCRA 104, 117-118)], involving an almost identical provision of the CBA, the Court reiterated the well-settled rule that the seafarer's non-compliance with the mandated conflict-resolution procedure under the POEA-SEC and the CBA militates against his claims, and results in the affirmance of the fit-to-work certification of the company-designated physician, thus:

> The [POEA-SEC] and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on

> board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician.
>
> If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. xxx[24]

There being no cogent reason to depart from the aforementioned ruling, the Court denies petitioner's Motion for Reconsideration insofar as it seeks to reinstate the NLRC's ruling finding petitioner entitled to permanent total disability benefits.

Nonetheless, the Court concurs with petitioner's asseveration that it was erroneous to absolve Padiz from joint and several liability with Dchle Seafront and Dohle Manning for the payment of the income benefit arising from his temporary total disability,[25] in view of Section 10 of Republic Act No. (RA) 8042,[26] otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," as amended by RA 10022[27] (RA 8042, as amended), which pertinently reads:

> SECTION. 10. *Money Claims*. - xxx
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> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves <u>be jointly and solidarity liable</u> with the corporation or partnership for the aforesaid claims and damages.**[28] (Emphasis and underscoring supplied)

Section 10 of RA 8042, as amended, expressly provides for joint and solidary liability of corporate directors and officers with the recruitment/placement agency for all money claims or damages that may be awarded to Overseas Filipino Workers (OFWs). While a corporate director, trustee, or officer who entered into contracts in behalf of the corporation <u>generally</u>. cannot be held personally liable for the liabilities of the latter, in deference to the separate and distinct legal personality of a corporation from the persons composing it, personal liability of such corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach when **he is made by a specific provision of law personally answerable for his corporate action**,[29] as in this case. Thus, in the recent case

of *Sealanes Marine Services, Inc. v. Dela Torre*,[30] the Court had sustained the joint and solidary liability of the manning agency, its foreign principal and the manning agency's President in accordance with Section 10 of RA 8042, as amended.

In addition, Dohle Seafront is presumed to have submitted a verified undertaking by its officers and directors that they will be jointly and severally liable with the company over claims arising from an employer-employee relationship when it applied for a license to operate a seafarer's manning agency, as required under the 2003 POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (POEA Rules).[31]

"Applicable laws form part of, and are read into, contracts without need for any express reference thereto; more so, when it pertains to a labor contract which is imbued with public interest. Each contract thus contains not only what was explicitly stipulated therein, but also the statutory provisions that have any bearing on the matter."[32] As applied herein, Section 10 of RA 8042, as amended, and the pertinent POEA Rules are deemed incorporated in petitioner's employment contract with respondents. These provisions are in line with the State's policy of affording protection to labor and alleviating the workers' plight,[33] and are meant to assure OFWs immediate and sufficient payment of what is due them.[34] Thus, as the law provides, corporate directors and officers are themselves solidarily liable with the recruitment/placement agency for all money claims or damages that may be awarded to OFWs.

Based on the foregoing premises, the Court, therefore, finds Padiz jointly and solidarily liable with Dohle Seafront and Dohle Manning for the payment of the income benefit arising from petitioner's temporary total disability, and, to such extent, grants petitioner's motion for reconsideration, and, in consequence, modifies the September 16, 2015 Decision accordingly.

II. <u>Respondents' Motion for Partial Reconsideration</u>

Petitioner's entitlement to income benefit was clearly shown in this case, in light of the undisputed fact that he needed continuous medical treatment for 194 days from his repatriation on March 11, 2012, until his last visit with the company-designated physician on September 21, 2012,[35] when he was declared fit to work.[36]

In this relation, the Court cannot subscribe to respondents' contention that entitlement to income benefit is applicable only to land-based employees compulsorily registered with the Social Security System (SSS),[37] considering that the 2010 POEA-SEC accords upon the manning agency/foreign principal the **duty** to cover Filipino seafarers under the SSS and other social protection government agencies.[38] Neither is the Court persuaded by respondents' argument that the obligation to pay the same falls on the SSS in view of their compliance with the above duty,[39] because the income benefit arising from a covered employee's temporary total disability is to be advanced by the employer, subject to reimbursement by the SSS[40] upon compliance with the conditions set forth under Section 1,[41] Rule X of the Rules Implementing Title II, Book IV of the Labor Code. Consequently, the Court finds no reason to reverse or modify the directive for respondents to jointly and severally pay petitioner his income benefit for 194 days,