753 Phil. 308

SECOND DIVISION

[G.R. No. 206285, February 04, 2015]

VERITAS MARITIME CORPORATION AND/OR ERICKSON MARQUEZ, PETITIONERS, VS. RAMON A. GEPANAGA, JR., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

Before this Court is a petition for review on *certiorari*[1] assailing the September 17, 2012 Decision[2] and the March 14, 2013 Resolution[3] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 115186, which stemmed from a claim for permanent disability benefits, sickness allowance, damages, and attorney's fees, filed by respondent Ramon A. Gepanaga, Jr. *(Gepanaga)* against petitioner Veritas Maritime Corporation *(Veritas)*, and its president, petitioner Erickson Marquez *(Marquez)*, before the National Labor Relations Commission *(NLRC)*.

In the August 27, 2009 Decision[4] of Labor Arbiter Fe S. Cellan *(LA)*, the complaint filed by Gepanaga was dismissed for lack merit. On appeal, the NLRC *reversed* the ruling of the LA and declared Gepanaga to be suffering from permanent total disability. The NLRC, thus, ordered Veritas and Marquez to compensate him in the amount of $89,100.00 or its Philippine Peso equivalent.[5] After their motion for reconsideration was denied by the NLRC in its June 28, 2010 Resolution,[6] Veritas and Marquez filed a petition for *certiorari*[7] with the CA.

The CA, while affirming the findings and conclusions of the NLRC, *modified* its disposition and made the obligation to pay disability benefits to Gepanaga the sole responsibility of Veritas.[8] Veritas attempted to seek reconsideration but its effort was rebuffed.[9]

Hence, this petition.

The Facts:

It appears that on March 11, 2008, Gepanaga entered into a contract of employment with Veritas, for and in behalf of St. Paul Maritime Corporation, to work on board the vessel M.V. Melbourne Highway as Wiper Maintenance for six (6) months.[10] By executing the contract of employment, the parties agreed to be bound by the provisions of Philippine Overseas Employment Administration Standard Employment Contract *(POEA-SEC)*, as well as the IBF-JSU AMOSUP IMMAJ collective bargaining agreement *(CBA)*.[11]

As Gepanaga was able to complete his contract with no incident, the parties

mutually agreed to extend his tenure as Wiper Maintenance. What happened shortly thereafter was what sparked the current controversy.

On November 28, 2008, while Gepanaga was doing maintenance work, his middle finger got caught between the cast metal piston liners of the diesel generator. He was then given first aid on board the vessel and was later brought to a hospital in Omaezaki, Japan. In the hospital, Gepanaga was diagnosed with "open fracture of [the] distal phalanx, left middle finger."[12] He was repatriated on December 3, 2008.

On December 4, 2008, Gepanaga reported right away to the clinic of Dr. Nicomedez G. Cruz *(Dr. Cruz)*, the company-designated physician. After Gepanaga was referred to the orthopedic surgeon of his clinic, Dr. Cruz concurred in the initial findings of doctors in Japan that Gepanaga was suffering from a "[c]rushing injuring with fracture distal phalanx left middle finger."[13] After a series of medical treatments, Dr. Cruz noted that Gepanaga no longer suffered the pain in the affected area and that his "grip is good and functional." Dr. Cruz thus issued his medical report, dated March 4, 2009, **declaring that Gepanaga was "cleared fit to go back to work."** [14]

Unconvinced that he had fully recovered from his injury, Gepanaga filed a complaint[15] against Veritas, Marquez and "K" Line Ship Management, Inc., claiming that the latter is the foreign principal of Veritas and owner of the M.V. Melbourne Highway.[16]

Several days after filing his complaint, Gepanaga sought the opinion of Dr. Edmundo A. Villa *(Dr. Villa)* of the Sogod District Hospital in Leyte. That same day, Dr. Villa gave his medical report finding that Gepanaga suffered from "permanent disability due to old compound fracture of the 3rd left phalanx/middle finger-left."[17] Thus, when Gepanaga filed his position paper,[18] he included Dr. Villa's report to support his contention that the injuries he had sustained while on board the M.V. Melbourne rendered him permanently unfit to work.

Ruling of the Labor Arbiter

On August 27, 2009, the LA dismissed the complaint for lack of merit. Finding the evaluation of the company-designated physician, Dr. Cruz, more credible than the findings of Dr. Villa, the LA opined that because he was the one who attended to Gepanaga from his repatriation until he was declared fit to work, Dr. Cruz was in the best position to make the evaluation of Gepanaga's true state of health. Moreover, the LA denied the claim for sick wages allowance after it found that as early as March 4, 2009, Gepanaga was already cleared to return to work. For lack of substantial evidence, the LA also denied Gepanaga's claims for reimbursement of his medical expenses, for damages and attorney's fees.

Ruling of the NLRC

As stated above, in its February 10, 2010 Decision, the NLRC found merit in Gepanaga's claim and reversed the decision of the LA. It opined that the assessment of the company-designated physician should not be binding in determining the true condition of Gepanaga, considering that he was chosen, engaged and remunerated

by Veritas and, as such, was likely to advance and serve its interests. Dr. Villa, on the other hand, was a government physician, and the NLRC gave credence to his medical assessment of Gepanaga's condition.

The NLRC also noted that the allegation that Gepanaga was covered by the CBA was never refuted, and, thus, awarded him $89,100.00 in accordance with its provisions.

Both parties sought reconsideration. The NLRC denied the motion of Veritas but granted Gepanaga's claim for attorney's fees.

Ruling of the Court of Appeals

In finding no grave abuse of discretion on the part of the NLRC, the CA held that Gepanaga indeed suffered from permanent disability as he was unable to perform his customary work as seaman for more than 120 days. According to the CA, although the Certification from Dr. Cruz was issued 91 days after his repatriation on December 3, 2008, there was no categorical evidence to show that he was able to resume his job after the crushing injury which resulted in the fracture of the distal phalanx left middle finger.

The CA agreed with the NLRC that the terms of the CBA should govern in determining the liabilities of the parties. Citing Article 27 of the CBA, the CA opined that the CBA did not prohibit a second medical opinion, and it even allowed the nomination of a third physician in case of disagreement between the assessment of the company-designated physician and the personal physician of the seafarer. Finding that Veritas failed to avail of a third doctor, the CA ruled that the NLRC did not err in construing that it is not only the findings of the company-designated physician that should control in determining the fitness and/or degree of disability of Gepanaga.

As the NLRC did, the CA concluded that Gepanaga suffered from permanent total disability as a result of his injuries. It was undisputed that because of the injury he sustained, Gepanaga lost the gripping power of his left hand and he was unable to return to his usual work as a seaman for a period of more than 120 days. The CA noted that despite the treatment and assessment of the company-designated physician, the injury sustained did not show any appreciable improvement as diagnosed by an independent physician; and that the independent assessment of Dr. Villa showed that the treatment he received failed to restore the ability of the injured finger to its normal function. With such handicap, the CA found that it would not be possible for Gepanaga to perform his work as a seaman.

The CA, however, pointed out that the NLRC failed to disclose the basis for the personal liability of Marquez. In its evaluation, the CA found that there was no categorical evidence to show that Marquez acted maliciously or in bad faith and, therefore, should not be made personally liable for the payment of the disability benefits.

Veritas and Marquez sought reconsideration but to no avail.

Hence, this petition.

In their petition, petitioners insist that Gepanaga is not entitled to permanent

disability benefits, since he was declared "fit to work" by the company after receiving treatment from the day he was repatriated on December 3, 2008 to March 4, 2009 for a total of 91 days. Citing the Court's ruling in *Vergara v. Hammonia Maritime Services, Inc.*[19] *(Vergara)*, the petitioners argue that Gepanaga's alleged inability to work after the lapse of 120 days from the time he suffered his injury does not automatically entitle him to the grant of permanent and total disability benefits.[20]

The petitioners also insist that they are not liable to pay attorney's fees since their denial of Gepanaga's claims was done in good faith and based on valid grounds. They point to the fact that almost immediately upon the repatriation of the respondent, they referred him to the company-designated physician for examination and treatment. They add that they also shouldered Gepanaga's medical expenses without raising any issue.[21]

Position of the Respondent

Maintaining the correctness of the decision of the CA, Gepanaga asserts that he was entitled to claim for permanent total disability benefits because his personal physician established that he was not fit to work. He claims that the award of attorney's fees was warranted as he was compelled to litigate to enforce his claims.

The Court's Ruling

The evidentiary records favor the petitioners.

In order to provide a clear-cut set of rules in resolving the ubiquitous conflict between the seafarer and his employer for claims of permanent disability benefits, the Court in *Vergara*, stated that the Department of Labor and Employment *(DOLE)*, through the POEA, had simplified the determination of liability for work-related death, illness or injury in the case of Filipino seamen working in foreign ocean-going vessels. Every seaman and vessel owner (directly or represented by a local manning agency) are required to execute the POEA-SEC as a condition *sine qua non* prior to the deployment of the seaman for overseas work. The POEA-SEC is supplemented by the CBA between the owner of the vessel and the covered seaman.

In this case, the parties entered into a contract of employment in accordance with the POEA-SEC. They also agreed to be bound by the CBA. Thus, in resolving whether Gepanaga is entitled to disability compensation, the Court will be guided by the procedures laid down in the POEA-SEC and the CBA.

Section 20(B)(3) of the POEA-SEC provides:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, the seafarer shall submit himself to a postemployment

medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to so, in which case, a written notice to the agency within the same period is deemed a compliance. 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.

[Emphasis supplied]

The CBA between the petitioners and the respondent states that:

20.1.3.2 The degree of disability which the employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. **If a doctor appointed by the seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties**. The copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer.

[Emphasis supplied]

Interpreting an almost identical provision of the CBA, the Court ruled, in the recent case of *Philippine Hammonia Ship Agency, Inc. v. Dumadag*[22] *(Dumadag)*, that a seafarer's non-compliance with the mandated procedure under the POEA-SEC and the CBA militates against his claims. In *Dumadag*, the Court explained:

The POEA-SEC and the CBA govern the employment relationship between Dumadag and the petitioners. **The two instruments are the law between them. They are bound by their terms and conditions**, particularly in relation to this case, the mechanism prescribed to determine liability for a disability benefits claim. In *Magsaysay Maritime Corp. v. Velasquez,* the Court said: "The POEA Contract, of which the parties are both signatories, is the law between them and as such, its provisions bind both of them." Dumadag, however, pursued his claim without observing the laid-out procedure. He consulted physicians of his choice regarding his disability after Dr. Dacanay, the company-designated physician, issued the fit-to-work certification for him. There is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent disability compensation on the strength of his chosen physician's opinions, without referring the conflicting opinions to a third doctor for final determination.