

## SECOND DIVISION

[ G.R. No. 199568, June 17, 2015 ]

**DOHLE-PHILMAN MANNING AGENCY, INC., DOHLE (IOM) LIMITED AND/OR CAPT. MANOLO T. GACUTAN, PETITIONERS, VS. HEIRS OF ANDRES G. GAZZINGAN, REPRESENTED BY LENIE L. GAZZINGAN, RESPONDENTS.**

### DECISION

#### **DEL CASTILLO, J.:**

Under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), an illness suffered by a seafarer during the term of his contract is presumed to be work-related and compensable. This rule is in consonance with the POEA's mandate to secure the best terms and conditions of employment of Filipino contract workers and to promote and protect their well-being.

By this Petition for Review on *Certiorari*,<sup>[1]</sup> Dohle-Philman Manning Agency, Inc., Dohle (IOM) Limited and/or Capt. Manolo T. Gacutan (petitioners) assail the May 26, 2011 Decision<sup>[2]</sup> and November 25, 2011 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 103580, which nullified the January 31, 2008 Decision<sup>[4]</sup> and March 12, 2008 Resolution<sup>[5]</sup> of the National Labor Relations Commission (NLRC) and ordered petitioners to pay respondents, as legal heirs of Andres G. Gazzingan (Gazzingan), total permanent disability benefits in the amount of US\$50,000.00 and sickness allowance of US\$1,300.00 plus 10% thereof as attorney's fees.

#### ***Antecedent Facts***

On October 14, 2005, petitioners hired Gazzingan as a messman for a period of nine months on board the vessel *M/V Gloria* with a basic monthly salary of US\$325.00.<sup>[6]</sup> Prior to his engagement, Gazzingan underwent a pre-employment medical examination (PEME) which yielded normal results except for a finding of left ventricular hypertrophy in his electrocardiogram test (ECG). Gazzingan was thus pronounced fit for sea duty<sup>[7]</sup> and on November 4, 2005, he boarded the vessel *M/V Gloria*.

In May 2006, while *M/V Gloria* was docked at the port of Cartagena, Colombia, Gazzingan experienced chest pains. On July 16, 2006, he was confined at the Cartagena de Indias Hospital due to chest pain, shortness of breath and back pain. The hospital's cardiovascular and thoracic surgeon, Dr. Hernan Fernandez Cuartas, diagnosed him to have Acute Type-B Dissection.<sup>[8]</sup> On August 3, 2006, Gazzingan was medically repatriated.

Upon arrival in Manila on August 5, 2006, Gazzingan was brought directly to Manila

Doctors Hospital for further medical evaluation under the care of Dr. Justo Cammayo (Dr. Cammayo). On August 8, 2006, petitioners received a letter from its company-designated physician, Dr. Raymond C. Banaga (Dr. Banaga), stating that Gazzingan is suffering from a non-work-related illness. Thus:

DATE: AUGUST 08, 2006  
TO: DOHLE PHILMAN MANNING AGENCY, INC.  
ATTN: Ms. Estrella R. Aguilar  
GM-Finance Admin  
FROM: PHYSICIANS DIAGNOSTIC SERVICES CENTER, INC.  
RE: Mr. Andres Gazzingan

Dear Ms. Aguilar,

This is with [regard] to your request for our opinion if the subject seafarer's illness is work-related or not.

Mr. Gazzingan is presently confined at Manila Doctors Hospital because of Aortic Dissection. Aortic Dissection results from [a] tear in the inner walls lining this great artery. This condition has potential for rupture or tamponade. Based on his pre-employment medical examination dated August 30, 2005 he was not found to be hypertensive with normal blood pressure at 110/70. The other risk factors associated with this condition like Marfans Syndrome, Coarctation of the Aorta, Aortic valve abnormalities are congenital in nature and are not work related in this case (for a ship messman).

Truly yours,

(Signed)  
RAYMOND C. BANAGA, M.D.

Noted by,

(Signed)  
PEDRO S. DE GUZMAN, M.D., FPCOM  
Medical Director<sup>[9]</sup>

At the Manila Doctors Hospital, Gazzingan underwent numerous diagnostic tests and treatment.<sup>[10]</sup> However, his confinement thereat lasted only until September 9, 2006 as Gazzingan had no financial capacity to defray his hospital expenses since petitioners refused to further shoulder the same in view of Dr. Banaga's declaration that his illness is not work-related. He was discharged from the hospital over the objection of his physician. In a medical certificate dated October 7, 2006,<sup>[11]</sup> Dr. Cammayo's final diagnosis of Gazzingan's illness was Dissecting Aneurysm.

### ***Proceedings before the Labor Arbiter***

On August 25, 2006, Gazzingan filed a Complaint<sup>[12]</sup> for non-payment or under payment of salaries/wages, sickness allowance, disability benefits and reimbursement of medical expenses and attorney's fees.

Petitioners disclaimed Gazzingan's entitlement to his claims by arguing that his medical condition is pre-existing for which no compensation is warranted under the POEA-SEC. They alleged that the ECG test conducted during his PEME confirmed that his illness was brought about by a physiological abnormality from birth. This, coupled with Gazzingan's admission of being a smoker,<sup>[13]</sup> proved that his illness is not work-related. Besides, Gazzingan's work could not have in any way contributed to the development of his condition because his work as a messman created no risk to produce such. Petitioners further pointed out that they shouldered Gazzingan's medical expenses; however, when Dr. Banaga declared his condition as not work-related and therefore not compensable, their obligation to provide medical assistance ceased. Petitioners explained that under the POEA-SEC, the company-designated physician is the one mandated to assess the medical condition of a seafarer upon medical repatriation.

Gazzingan, on the other hand, disputed Dr. Banaga's declaration for being self-serving and for lack of basis. He asseverated that his illness is not congenital but was caused by hypertension which was not immediately detected for being asymptomatic. He emphasized that during the previous deployments abroad, he was declared fit for sea duties therefore, his illness could not be pre-existing. Gazzingan attributed his sickness to his work as a messman which entailed waking up very early in the morning, lifting heavy stocks/supplies and serving the crew members on board, and being on-call for the arrival of supplies. Thus, Gazzingan invoked his right to compensation for his ailment which he claimed to be work-connected.

In a Decision<sup>[14]</sup> dated September 18, 2007, the Labor Arbiter opined that although the cause of or the risk of contracting aortic dissection is uncertain, this uncertainty does not, however, eliminate the probability that such illness is work-connected. And since actual proof of causation is not necessary to justify compensability and it is enough that the nature of the seafarer's work had contributed even in a small degree to the development of the disease, as in this case, the Labor Arbiter granted Gazzingan's claims, thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering the [petitioners] to pay jointly and solidarily, [Gazzingan] his total permanent disability benefits in the amount of US\$50,000.00 and his sickness allowance of US\$1,300.00, in Philippine currency, at the rate of exchange prevailing at the time of payment. [Petitioners] are likewise ordered to pay [Gazzingan] attorney's fees equivalent to 10% of the total monetary awards.

All other claims are dismissed.

SO ORDERED.<sup>[15]</sup>

Proceedings before the National Labor Relations Commission

In their appeal to the NLRC, petitioners claimed that the Labor Arbiter erred (1) in declaring Gazzingan's illness as work-related despite the contrary opinion of the company-designated physician who is the one mandated by law to determine and assess a seaman's disability; (2) in disregarding Gazzingan's failure to challenge Dr. Banaga's declaration by not seeking the opinion of another doctor in accordance with the procedure laid down in the POEA-SEC; (3) in awarding US\$50,000.00 to

Gazzingan as permanent total disability benefits since the POEA-SEC provides for the grant of such amount only for death benefits; (4) in awarding sickness allowance when the same has already been paid by petitioners to Gazzingan; and, (5) in awarding attorney's fees.

On January 30, 2008, Gazzingan died of hemorrhagic shock secondary to dissecting aortic aneurysm.<sup>[16]</sup>

In a Decision<sup>[17]</sup> dated January 31, 2008, the NLRC gave weight to the opinion of the company-designated physician that Gazzingan's illness is not work-related. It ruled that the Labor Arbiter's Decision is not rooted on legal and factual basis. It explained that as Gazzingan did not seek and present a second opinion from another physician, he left the NLRC with no option but to consider the certification issued by Dr. Banaga as an accurate assessment of his medical condition. The NLRC took note that Gazzingan is a smoker and has a prior surgery for the excision of lipoma, a hereditary disease. Thus, it concluded that his aortic dissection developed due to hereditary susceptibility, is not work-related and, consequently, not compensable. The NLRC disposed of the appeal as follows:

WHEREFORE, on the basis of the foregoing, the decision appealed from is hereby reversed and set aside. A new one is entered dismissing the complaint for lack of merit.

SO ORDERED.<sup>[18]</sup>

Gazzingan's counsel filed a motion for reconsideration which was denied for lack of merit in the NLRC Resolution<sup>[19]</sup> of March 12, 2008.

Proceedings before the Court of Appeals

Respondents, as heirs of Gazzingan, filed a Petition for *Certiorari*<sup>[20]</sup> with the CA. They imputed grave abuse of discretion amounting to lack of jurisdiction on the NLRC in ruling that Gazzingan's illness is congenital and not compensable; and in giving credence to Dr. Banaga's assessment, which was not based on a thorough, exhaustive and complete examination of Gazzingan but is merely an opinion on the nature of the illness. Respondents further argued that compensability of disability claims is presumed and this presumption cannot be defeated by an opinion plucked out of thin air just to favor the employer.

On May 26, 2011, the CA rendered a Decision<sup>[21]</sup> granting the Petition, setting aside the NLRC ruling, and reinstating the Labor Arbiter's Decision. It found no substantial evidence to prove that the illness of Gazzingan is congenital. It noted that Gazzingan, who had previously worked abroad for a similar job, had no record of having suffered from, or was treated for, dissecting aneurysm or any other heart ailment. The CA thus concluded that his illness is presumed to have been acquired or aggravated by his strenuous job on board *M/V Gloria*. In view of the same, it upheld the Labor Arbiter's awards of permanent disability benefits, sickness allowance and attorney's fees in favor of respondents.

Petitioners sought reconsideration of the CA Decision. They argued that Gazzingan's smoking habits and history of a congenital condition of lipoma, as both revealed in

his PEME, and the unchallenged expert opinion of Dr. Banaga constitute more than enough substantial evidence to conclude that his ailment is not work-related.

In a Resolution<sup>[22]</sup> dated November 25, 2011, the CA denied petitioners' Motion for Reconsideration. It noted that Gazzingan's lipoma has no relation or causal connection to the ailment that caused his death. Anent Dr. Banaga's assessment, the CA ruled that it cannot be relied upon because it was a mere opinion based solely on the PEME results. Dr. Banaga did not perform any prior assessment of Gazzingan's health condition while he was confined at Manila Doctors Hospital or any exhaustive post-employment medical examination on him. The CA reiterated that the physical stress that Gazzingan suffered while he performed a strenuous job on board the vessel exposed him to injuries caused by dissecting aneurysm.

### **Issues**

Hence, the present Petition raising the following issues:

- A. WHETHER THE DECEASED'S ILLNESS IS WORK-RELATED.
- B. WHETHER THE COMPANY-DESIGNATED PHYSICIAN, TO WHICH GROUP DRS. BANAGA AND CAMMAYO ARE PART OF, HAS THE AUTHORITY TO ESTABLISH IF THE ILLNESS IS NOT WORK[-]RELATED.
- C. WHETHER RESPONDENTS HAVE THE BURDEN OF PROOF TO PROVE WORK RELATION.
- D. WHETHER RESPONDENTS COULD RELY ON THE DISPUTABLE PRESUMPTION OF WORK RELATION TO SUPPORT THEIR CASE WITHOUT ANY MEDICAL EVIDENCE TO CONTRADICT THE COMPANY DOCTOR'S OPINION.
- E. WHETHER PAYMENT OF SICKNESS ALLOWANCE UNTIL SUCH TIME THAT THE NATURE OF THE ILLNESS HAS BEEN ESTABLISHED AS NOT WORK CONNECTED EXTINGUISHED PETITIONERS' OBLIGATIONS AS REGARDS THE PAYMENT THEREOF.
- F. WHETHER RESPONDENTS ARE ENTITLED TO 10% ATTORNEY'S FEES IN THE ABSENCE OF BAD FAITH ON THE PART OF THE PETITIONERS.<sup>[23]</sup>

Petitioners maintain that there is substantial evidence to support their contention that Gazzingan's ailment has no work-connection. They contend that Gazzingan's condition was caused, not by hypertension, but by atherosclerosis, a congenital disease, the development of which was hastened by Gazzingan's smoking habits. The congenital nature of Gazzingan's ailment is further buttressed by the result of his PEME indicating a history of lipoma excision and a finding of left ventricular hypertrophy. Petitioners aver that respondents cannot simply rely on the presumption of work-relation; they have to present adequate evidence to overcome Dr. Banaga's declaration that Gazzingan's ailment is congenital. However, they failed to present evidence to prove that Gazzingan's work caused or contributed to the