765 Phil. 341

SECOND DIVISION

[G.R. No. 211882, July 29, 2015]

ELBURG SHIPMANAGEMENT PHILS., INC., ENTERPRISE SHIPPING AGENCY SRL AND/OR EVANGELINE RACHO, PETITIONERS, VS. ERNESTO S. QUIOGUE, JR., RESPONDENT.

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the July 5, 2013 Decision[1] and the March 25, 2014 Resolution[2] of the Court of Appeals (*CA*), in CA-G.R. SP No. 125064, which affirmed the February 16, 2012 and March 30, 2012 Resolutions of the National Labor Relations Commission (*NLRC*), in LAC No. 01-000014-12, a case **where the certification of the company-designated physician on the claimed disability of the seafarer was issued beyond the 120-day period**.

The Facts:

Respondent Ernesto S. Quiogue Jr. (*Quiogue*) was hired by Elburg Shipmanagement Philippines, Inc., for and on behalf of its principal Enterprise Shipping Agency SRL (*petitioners*), to work as Able Bodied Seaman on board the vessel MT Filicudi M with a basic salary of US$363.00. The employment contract was governed by the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*) and the International Transport Workers Federation Total Crew Cost Collective Bargaining Agreement (*ITF TCC CBA*), providing for higher benefits in the event of disability or death of a worker.

On November 11, 2010, while Quiogue was on duty transferring the fire wire, his co-worker accidentally dropped it on his left foot. He was immediately given first aid and thereafter sent to a hospital in Tarragona, Spain. The x-ray examination on his injured foot showed that one of his metatarsal bones was fractured. On November 19, 2010, as his injury prevented him from performing his duties on board, he was repatriated and immediately referred to the Metropolitan Medical Center where he was diagnosed to have sustained "non-displaced Fracture of the Cuneiform Bone, Left Foot."

Quiogue underwent treatment and therapy with the company-designated physician from November 2010 to April 2011. On April 13, 2011, he was certified as "fit to work" by the company-designated physician. Notwithstanding the treatment procedures, Quiogue continued to feel pain and discomfort. Consequently, he sought a second opinion from Dr. Nicanor Escutin (*Dr. Escutin*), an orthopedic surgeon. After a battery of tests, the latter concluded that the extent of his injury rendered him permanently and totally incapable to perform his work as a seafarer. The medical certificate issued by Dr. Escutin reads:

"FINAL DIAGNOSIS:

- FRACTURE, CUNEIFORM, LEFT FOOT
- TRAUMATIC ARTHRITIS, LEFT FOOT

He is given a PERMANENT DISABILITY. He is UNFIT FOR SEADUTY in whatever capacity as a SEAMAN."[3]

Quiogue sought compensation based on total permanent disability from petitioners, but the latter refused, insisting that he was not entitled to total permanent disability benefits because he was declared as fit to work by the company-designated physician. This prompted Quiogue to file a complaint before the NLRC.

On September 26, 2011, the Labor Arbiter (*LA*) ruled in Quiogue's favor on the ground that his left foot injury affected his dexterity and flexibility in walking and enduring weights. This became a liability to Quiogue's employment as he could no longer endure the manual and laborious work required of him as a seafarer. The dispositive portion of the LA decision[4] reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents, jointly and severally, to pay complainant the amount of USD89,000.00 representing his permanent and total disability benefit in accordance with the existing CBA and 10% of this total award as attorney's fees.

Other claims are hereby denied for want of sufficient evidence hereof.

SO ORDERED.[5]

On appeal, the NLRC affirmed *in toto* the above decision and later denied petitioners' motion for reconsideration.[6] According to the NLRC, a seafarer was not precluded from engaging the services of the physician of his own choice as it was clear from Section 20 B (3)[7] of the POEA-SEC. In work-related injury or illness during the term of the contract of a seafarer, the concerned seafarer was required to have himself examined by the company-designated physician for purposes of confirmatory medical evaluation to determine the gravity of the illness and injuries. Nonetheless, the NLRC stated that it was the competence of the attending physician, not the designation, which determined the true health status of the patient-seafarer and what was needed for the purpose of the grant of compensation. In situations where the certification of the company-designated physician would clash with the findings of the doctors of the seafarer, it would be the findings favorable to the complainant that must be adopted. Moreover, from the time that Quiogue had been injured until the time that he was allegedly certified to be fit to work by the company-designated physician on April 13, 2011, more or less five (5) months had already transpired. His disability was already considered permanent and total in accordance with the ruling in *Oriental Shipmanagement Co., Inc. v. Bastol*.[8]

In their petition for *certiorari* with the CA, petitioners insisted that Quiogue was not entitled to receive permanent and total disability benefits because he was assessed as "fit to work" by the company-designated physician, whose evaluation was more accurate for having treated him for almost five (5) months. Petitioners claimed that

the NLRC committed grave abuse of discretion when it gave greater weight to the diagnosis of Dr. Escutin than to that of the company-designated physician who was in a better position to determine Quiogue's physical fitness. They also pointed out that the NLRC should not have awarded attorney's fees in favor of Quiogue as its basis was not discussed in the LA decision.

For his part, Quiogue insisted that he was entitled to permanent and total disability benefits since he was not able to pursue his usual work and earn therefrom for more than 120 days.

In its Reply, petitioners informed the CA that Quiogue had previously filed a complaint where he was also claiming permanent disability benefits against his previous employer for injuries he sustained when he accidentally slipped from the vessel's stairway while on duty. The favorable findings of the labor tribunal pertaining to his entitlement to permanent disability benefits were affirmed by the CA, thus, showing Quiogue's propensity to make legal processes a money-making venture.

In the assailed decision, the **CA affirmed** the ruling of the NLRC that Quiogue was entitled to permanent and total disability benefits but deleted the award of attorney's fees. It held that **notwithstanding the company-designated physician's assessment private respondent is already fit to work, his disability is considered permanent and total because he was only certified fit to work after the lapse of more than 120 days from the time he was repatriated on November 19, 2010**.[9] Further, the fact the Quiogue had already received permanent disability benefits from his former employer for an injury he had sustained in the past did not nullify his claim against his succeeding employers. The CA disposed the case as follows:

> WHEREFORE, premises considered, the petition is PARTLY GRANTED. The judgment of the NLRC in LAC NO. 01-000014-12 sustaining the decision of the Labor Arbiter is AFFIRMED with MODIFICATION in that the award of attorney's fees is hereby DELETED for lack of sufficient factual and legal basis.
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> SO ORDERED.[10]

After their motion for reconsideration was denied, petitioners filed this petition for review, presenting the following:

ARGUMENTS

> 1] Quiogue had previously filed a claim for total and permanent disability benefits for which he was found to be suffering from permanent disability.
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> 2] The fact that Quiogue was awarded permanent total disability benefits in the amount of US$150,000.00 plus attorney's fees of US$15,000.00 in 2007 must bar the claim for disability benefits against petitioners.
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> 3] Dr. Escutin's disability report cannot prevail over the company-designated physician's findings, absent any showing that the declaration

of fitness to work was tainted with fraud or irregularity. The ruling in *Vergara v. Hammonia Maritime Services, Inc.*,[11] shows that more weight should be given to the assessment made by company doctors because they were the ones who attended and treated the seafarer throughout his illness than to the findings by those who had merely examined him upon recovery and only for the purpose of determining the degree of disability. While the seafarer is entitled to seek second or third opinion from his private doctors, this does not automatically set aside the findings of the company-designated physician.

4] It is of no moment that petitioners never objected to Quiogue's pre-employment medical examination (PEME), declaring him fit to work. A PEME is not exploratory in nature. It is not indicative of a seafarer's complete and whole medical condition.

5] The award of total and permanent disability benefits to Quiogue would have the effect of establishing a dangerous precedent.

6] Quiogue is not entitled to permanent and total disability benefits on the pretext that his medical treatment lasted for more than 120 days or he was unable to return to seafaring duties for the same period.

In his Comment,[12] Quiogue countered that his previous receipt of disability compensation from his former employer was irrelevant to his present claim for permanent disability benefits against petitioners. He argued that the two claims for total and permanent disability came from different employment contracts which were years apart and not simultaneous. Also, the injuries were different and it was plain bad luck that he was injured in both employment contracts. He posited that under the POEA-SEC, the seafarer may object to the company-designated physician's assessment by securing a second opinion from a doctor of his choice. Thus, the company-designated physician's declaration of fitness, despite recurring pains in his left injured foot, could not be considered as absolute determination of his health condition. Dr. Escutin's assessment of permanent total disability as he was already incapable to perform his work as seaman due to his injury deserved full credence.

Quiogue further asserted that there was no basis for petitioners' allegation that the permanent disability claim of Quiogue was only due to his inability to work for 120 days. He claimed that he suffered permanent disability due to a work-related injury which prevented him from returning to his sea duties until the present time. According to him, it was not the period that was being compensated but the fact that he was rendered incapable to work due to disability. Thus, the fear of petitioners that the Court, in affirming the award of disability compensation to Quiogue, would set a dangerous precedent should not be given any credence.

In their Reply,[13] petitioners reiterated their arguments and prayer that the petition be given due course and that the assailed decision and resolution of the CA be reversed and set aside.

It should be noted that the LA found that Quiogue's left foot injury had rendered him incapable to return to his seafaring occupation, hence, entitled him to

permanent total disability as substantiated by the assessment of Dr. Escutin. Such finding was affirmed by the NLRC which regarded Quiogue's disability as permanent and total due to his inability to perform his job for more than 120 days. In sustaining the award of permanent and total disability benefits to Quiogue, the CA ratiocinated:

> In *Quitoriano v. Jebsens Maritime, Inc.* (*624 Phil. 523 [2010]*), the High Court held that:
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> > Thus, Court has applied the Labor Code concept of permanent total disability to the case of seafarers, xxx
> >
> > xxxx
> >
> > There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:
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> > > Sec. 2. Disability, xxx
> > >
> > > (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation **for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules**.
> > >
> > > xxxx
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> In *Vicente v. ECC* (G.R. No. 85024, January 23, 1991, 193 SCRA 190, 195):
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> > xxx the **test** of whether or not an employee suffers from 'permanent total disability' is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job **for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees Compensability** (which, in more detailed manner, describes what constitutes temporary total disability), then the said employee undoubtedly suffers from 'permanent total disability' regardless of whether or not he loses the use of any part of his body.
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> > xxxx