

FIRST DIVISION

[G.R. No. 195978, August 19, 2015]

JOSE YOAC ESTRELLA, PETITIONER, VS. BSM CREW SERVICE CENTRE PHILS., (FORMERLY PHILIPPINE HAMMONIA SHIP AGENCY INC.) AND HANSEATIC SHIPPING CO., LTD., RESPONDENTS.

D E C I S I O N

PEREZ, J.:

The propriety of an assessment of permanent total disability after an incapacity lasting more than 120 days is at issue in this Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court, assailing the 30 November 2010 Decision^[1] rendered by the then Special Twelfth Division of the Court of Appeals (CA) in CA-G.R. SP No. 110492, the decretal portion of which states:

WHEREFORE, in view of the foregoing, the assailed NLRC resolutions dated March 30, 2009 and July 15, 2009 are hereby **MODIFIED** to delete the award of permanent disability benefits to private respondent Estrella in the amount of US\$60,000.00. Instead, Estrella is hereby declared entitled to temporary total disability benefits equivalent to US\$8,000.00 to be paid by petitioners to private respondent in Philippine currency equivalent at the time of actual payment. The award of attorney's fees **STANDS**.^[2]

The Facts

On August 4, 2007, petitioner Jose Yoac Estrella was employed by respondent BSM Crew Service Center Phils. (formerly Philippine Hammonia Ship Agency, Inc.) as Second Engineer for the Venus Gas, an ocean-going vessel owned by its foreign principal, respondent Hanseatic Shipping Co. Ltd. Duly approved by the Philippine Overseas Employment Administration (POEA), the Employment Contract executed by the parties fixed the duration of Petitioner's engagement in said capacity at six months and provided a monthly salary of US\$1,600.00, among other benefits.^[3]

Petitioner boarded said vessel on 23 August 2007 and immediately started discharging his duties and responsibilities. Returning to the vessel after placing a call at the dockyard phone booth at around 9:00 p.m. of 23 August 2007, petitioner lost his balance and tripped on a mooring line while trying to regain his footing. The mishap caused him to tumble towards a wooden crate upon which he fell and hurt his right shoulder.^[4]

Considering that his right shoulder became swollen and painful, petitioner was referred the next day to a doctor who had him undergo an X- ray examination. Although the examination showed no fracture or dislocation,^[5] petitioner was

declared unfit for work for four days and subsequently resumed working after being prescribed pain medication. Complaining of worsened pain caused by a suspected lump close to his armpit which he claimed to have suffered since the first week of September 2007, petitioner underwent another X-ray examination on 18 October 2007 while the vessel was dry-docked. Because the result revealed a possible scapular fracture and soft tissue mass in his upper right arm, petitioner was declared unfit for duty by the doctor who also recommended his repatriation.^[6] Petitioner signed off from the vessel on 24 October 2007 and arrived in the Philippines two days thereafter.^[7]

On 27 October 2007, respondents referred petitioner to the company-designated clinic, the Marine Medical Services (Metropolitan Medical Center) where he was attended to by Dr. Robert Lim and Dr. Ramon Lao. With yet another x-ray examination showing "no discreet bone or joint abnormality," petitioner was nevertheless prescribed medication and commencement of rehabilitation. Petitioner was, however, initially diagnosed to be suffering from a possible right rotator cuff tear^[8] and recommended for an MRI examination which later showed *tendinosis of the distal supraspinatus tendon, partial tear of the subscapularis tendon and tear of the transverse ligament*. Advised to continue his physical therapy upon a showing of clinical improvement,^[9] petitioner was subjected to an ultrasound examination which ruled out a solid or cystic mass despite the finding that a "clinically visible lump on the dorsolateral aspect of the upper right arm shows a diffuse swelling of the triceps brachii muscle."^[10]

While noting his report of pain on the medial aspect of his right shoulder joint, a 17 January 2008 certification was issued in favor of petitioner to the effect that the range of motion of his right shoulder has improved with physical therapy.^[11] Queried by respondents about petitioner's prognosis and interim disability assessment, his attending physician issued the following 31 January 2008 assessment,^[12] to wit:

Barring unforeseen circumstances, prognosis is fair to good and estimated length of treatment is approximately 4-6 weeks more of continuous rehabilitation for pain management and rehabilitation exercises.

His interim disability assessment is Grade 9 – ankylosis of 1 shoulder, the shoulder blade remaining mobile.

Although re-evaluated on 24 March 2008 and advised to continue his rehabilitation treatment and to come back for re-evaluation on 4 April 2008,^[13] petitioner filed a complaint for disability benefits, damages and attorney's fees before the arbitral level of the National Labor Relations Commission (NLRC) on 25 March 2008. Docketed as NLRC NCR No. (L) 03-04372-08, the complaint was resolved in petitioner's favor in the 10 November 2008 Decision^[14] rendered by Labor Arbiter Dolores Peralta-Beley. In awarding US\$60,000.00 as permanent total disability benefits and 10% thereof as attorney's fees in his favor, the Labor Arbiter ruled that petitioner continued to suffer from the injury he sustained despite the lapse of almost two months from the time he was given an interim assessment by the company-designated physician. Interpreting the subsequent lack of a categorical assessment of petitioner's disability as demonstrative of the uncertainty and extent

thereof, the Labor Arbiter rejected the earlier assessment made by the company-designated physician.

On appeal, the Labor Arbiter's decision was affirmed *in toto* in the 30 March 2009 Resolution issued by the Second Division of the NLRC in OFW (L) 03-04372-08 (LAC No. 12-000962-08).^[15] With the denial of their motion for reconsideration in the 15 July 2009 Resolution issued in the same case,^[16] respondents filed the Rule 65 petition for *certiorari* docketed before the CA as CA-G.R. SP No. 110492. On 30 November 2010, the CA's Special Twelfth Division rendered the herein assailed decision modifying the NLRC's resolutions by deleting the grant of permanent disability benefits in favor of petitioner and, in lieu thereof, awarding US\$8,000.00 as temporary total disability benefits. Finding that the subject disability had not lasted beyond the 240 days within which employers are mandated to assess the former's disability in the event that the same extends beyond the initial 120 day period provided under the law, the CA ruled that petitioner was only entitled to an award of temporary total disability benefits,^[17] computed in the following wise:

No. of months incapacitated	= 150 days/30 days
	= 5 months
Disability benefits	= US\$1,600.00 x 5 months
	= US\$8,000.00 ^[18]

Aggrieved by the foregoing decision and the CA's 14 March 2011 denial of his motion for reconsideration,^[19] petitioner filed the instant petition within the reglementary period.

The Issues

In seeking the reinstatement of the rulings handed down by the Labor Arbiter and the NLRC, petitioner presents the following issues for resolution:

1. Whether or not petitioner is permanently and totally incapacitated to resume sea duties as would entitle him to the full disability benefits adjudicated by the Labor Arbiter and the NLRC.
2. Whether or not the assessment made by the company-designated physician could be given credence.
3. Whether or not the CA erred in finding petitioner entitled only to temporary total disability benefits.

The Court's Ruling

The Court finds the petition bereft of merit.

As regards disability compensation, it has, concededly, been this Court's consistent ruling that it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of the seafarer's earning capacity.^[20] Entitlement to disability benefits, however, is a matter governed by, among others, Articles 191

to 193 of the Labor Code of the Philippines, Rule X of the Rules and Regulations Implementing Book IV thereof, the POEA-Standard Employment Contract (SEC) ordained pursuant to Department Order No. 4, series of 2000 of the Department of Labor and Employment, the contract between the parties^[21] and the provisions of Collective Bargaining Agreements, if any. Read into every contract of employment involving Filipino seafarers and considered as the law between the parties,^[22] the POEA-SEC, under Section 20-B(3) thereof, pertinently provides as follows:

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

In the often cited case of *Vergara v. Hammonia Maritime Services, Inc.*,^[23] the Court ruled that:

[T]he seafarer, upon sign-off from the vessel, the seaman 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.

Evidently, it is the company-designated physician who must declare the seaman's fit to work or assess the degree of his permanent disability^[24] within the specified 120-day period which may be extended up to 240 days.^[25] An action for permanent and total disability benefits may, however, be pursued by a seaman under any of the following circumstances,^[26] to wit: