

FIRST DIVISION

[G.R. No. 188190, April 21, 2014]

**BARKO INTERNATIONAL, INC./CAPT. TEODORO B. QUIJANO
AND/OR FUYO KAIUN CO. LTD., PETITIONERS, VS. EBERLY S.
ALCAYNO, RESPONDENT.**

R E S O L U T I O N

REYES, J.:

This is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision^[2] dated December 5, 2008 and the Resolution^[3] dated June 3, 2009 of the Court of Appeals (CA) in CA-G.R. SP. No. 102402 denying the motion for reconsideration thereof. The assailed CA decision reversed the Resolution^[4] dated November 29, 2007 of the National Labor Relations Commission (NLRC) and reinstated the Decision^[5] dated April 10, 2007 of the Labor Arbiter (LA) upholding the award of permanent and total disability benefits in favor of Eberly S. Alcayno (respondent).

Facts of the Case

On November 18, 2005, the respondent was employed by Fuyo Kaiun Co. Ltd. through its local manning agent, Barko International, Inc. (petitioners), as Able-bodied Seaman. The employment contract^[6] provided for a contract period of nine months with a basic monthly salary of US\$539.00, a fixed overtime pay in the amount of US\$401.00 plus vacation leave with pay. His prime duty, among others, was to paint and chip rust on deck or superstructure of ship and to give directions to the crew engaged in cleaning wheelhouse and quarterdeck^[7] on board the vessel, M/V Cape Iris.

Having passed the required Pre-Employment Medical Examination (PEME) and found fit for sea service,^[8] the respondent boarded the ocean vessel M/V Cape Iris on December 1, 2005.

After one month on board the vessel, the respondent complained of stiff neck, and his right jaw started to swell. His physical condition worsened despite medications given him on board until he signed off on February 2, 2006 at the port of the Suez Canal, Egypt where he was examined by a certain Dr. Michael H. Mohsen (Dr. Mohsen) of the Dr. Nazmy Hospital. Dr. Mohsen's diagnosis stated that the respondent had a "*firm mass in the left side of neck with severe diffuse infection and pus collection in the neck, gangrene and necrosis in skin and tissues of neck, Uncontrolled D.M., Toxaemia and this condition may be due to chronic disease or malignancy.*"^[9] The Medical Report^[10] issued by the Dr. Nazmy Hospital recommended hospital confinement. It further reads, as follows:

Patient name: Alcayno
Eberly Age: 49 y[r]s.
Date: 2 / 2 / 2006.

We received Patient at 5:00 pm.

Presenting with :-

1. Severe diffuse infection in the neck with discharge of pus.
2. Uncontrolled D.M.
3. Fever and toxemia due to severe infection.

Patient needs stay in hospital about 5 days or more to do:

1. Control D.M with insulin.
2. Drainage and cleaning to severe infection of neck under general anaesthesia then change dressing 2 times per day till control of infection and improving toxemia and fever.
3. Giving parental massive antibiotics.
4. Follow up of blood sugar.^[11]

On February 8, 2006, the respondent was repatriated to the Philippines.

Upon arrival in Manila, the respondent was examined by Dr. Nicomedes G. Cruz (Dr. Cruz), a company-designated physician. The diagnosis^[12] indicated: Uncontrolled *diabetes mellitus* and *tuberculous adenitis*. The respondent was placed under a six-month anti-tuberculosis treatment.

As early as June 23, 2006, the respondent consulted a private physician, Dr. Regina Pascua Barba, who also medically assessed him to be suffering from cervical tuberculosis adenitis as similarly assessed by the company-designated physician. She recommended continuous treatment and medication for the respondent until January 2007.^[13]

On July 6, 2006, the respondent filed a complaint for disability benefits, reimbursement of medical expenses, payment of the unexpired portion of his contract, moral and exemplary damages and attorney's fees against the petitioners. To support his claim, he alleged that his illness was contracted while he was on board M/V Cape Iris; that he was repatriated for medical reasons and was treated for more than 120 days; and, that he suffered a permanent total disability with Grade 1 impediment. Thus, he should be compensated by the petitioners.

The petitioners denied the claim and averred that a company-designated physician, in fact, issued a handwritten medical evaluation on August 17, 2006 finding his condition well-controlled, asymptomatic, and stable and therefore, physically fit to resume work anytime.^[14] On August 22, 2006, Dr. Cruz declared the respondent fit to work on even date after completion of the anti-Koch's medication for six months.^[15] Such fact was not disputed; hence, there is no disability to speak of.

Decision of the LA

In a Decision^[16] dated April 10, 2007, the LA granted the claim of the respondent. The LA explained that the disease suffered by the respondent was contracted during the term of his employment on board M/V Cape Iris; that he was declared fit to work even if it was indicated in his PEME that the respondent had “pulmonary fibrosis right lower lung with calcified benign nodules” and was thus able to board the vessel; that the *tuberculous adenitis* and *diabetes mellitus* of the respondent was assessed by a company- designated physician to be present upon the former’s repatriation.

According to the LA, the respondent’s illness is a permanent total disability as it prevented him from earning a living for more than 120 days (February 2, 2006 to August 22, 2006). An award of the disability compensation is intended to help the employee in making ends meet during the time when he is unable to work.^[17] As provided for in the Schedule of Disability Allowances of the Standard Employment Contract of the Philippine Overseas Employment Agency,^[18] the respondent is entitled to disability benefits of Grade 1 or the amount of US\$50,000.00 x 120% or US\$60,000.00. He was also awarded medical expenses of P2,766.50, as supported by receipts.^[19] In addition, he was entitled to receive ten percent (10%) of the total award as attorney’s fees. His claim for moral and exemplary damages was, however, denied for lack of basis. The *fallo* of the LA decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering [petitioners] BARKO INTERNATIONAL, INC. and FUYO KAI[U]N CO. LTD. jointly and severally to pay [respondent] the amount of [US\$]60,000.00 or its peso equivalent representing permanent and total disability.

Medical expenses in the amount of P2,766.00 is likewise awarded.

Likewise, [petitioners] are jointly and severally liable to pay [respondent] attorney’s fees equivalent to ten (10%) percent of the amount due him.

All other claims are DISMISSED for lack of basis.

SO ORDERED.^[20]

Decision of the NLRC

In a Resolution^[21] dated November 29, 2007, the NLRC reversed the decision of the LA as it found no factual and legal basis to support the respondent’s allegation that the *tuberculous adenitis* and *diabetes mellitus* were contracted while on board the vessel in order for it to be considered as compensable; that *tuberculous adenitis* and *diabetes mellitus* “takes quite a number of years to develop and cannot just be acquired in so short a time as the tour of duty of the [respondent], which started on December 1, 2005 up to February 2, 2006 only[; n]or has there been evidence presented that the working conditions on board the vessel contributed to or exacerbated the physical condition of the [respondent].”^[22] The NLRC further

criticized the failure of the respondent to seek the opinion of another doctor to contest the medical findings of the company-designated physician. Thus, it puts to question how the LA arrived at the conclusion that the petitioners failed to substantiate their averments. Lastly, the NLRC stressed that what matter more is the schedule of disability rather than the number of days the seafarer is unable to perform his customary work.^[23] Hence, the NLRC ordered the dismissal of the complaint for lack of merit.

Decision of the CA

Undaunted, the respondent sought relief to the CA *via* petition for *certiorari*.

The CA granted the petition and reversed the resolution of the NLRC. According to the CA, it is the incapacity of a seafarer to work resulting in the impairment of his earning capacity which is compensated and not the injury or illness itself. The CA further stated that when a seafarer is medically repatriated and assessed as incapable to regularly perform his duties for a period beyond 120 days, he shall be deemed to have suffered from a permanent disability which entitles him to a corresponding compensation.^[24]

With this, the CA also emphasized that where the claimant's ailment occurred during and in the course of employment, the same is presumed as the cause of the ailment.^[25] Sadly, the petitioners failed to refute the same. It is not required that the employment was the sole factor for the development of the ailment as it is enough that the said employment contributed to it "*even in a small measure.*"^[26] Considering further that the respondent's prime duties included the cleaning and maintenance of the deck or superstructure of the ship, which constantly exposed him to different types of hazardous chemicals like paints, thinners and other forms of agents and harmful substances, the same may have invariably contributed to the aggravation of his illness. Hence, the CA found the LA decision to be more in accord with law and jurisprudence in granting the permanent total disability benefits, as prayed for by the respondent.

The petitioners filed a motion for reconsideration.^[27] Citing the case of *Vergara v. Hammonia Maritime Services, Inc., et al.*,^[28] the petitioners contended that the inability to work for a period of 120 days to a maximum of 240 days is only a temporary total disability which becomes "permanent" only (a) when so declared by the company physician within the periods he is allowed to do so, or (b) upon expiration of the 240-day period without a declaration of either the fitness to work or existence of "permanent" total disability. Here, the respondent was declared "fit to work" by the company-designated physician, Dr. Cruz on August 22, 2006, well within the 240-day period from the date of the respondent's repatriation on February 8, 2006. Therefore, the respondent is not entitled to disability benefits.^[29]

The petitioners, moreover, pointed out that in case of conflict between the company-designated doctor and a claimant's private doctor, a third opinion should be obtained. Otherwise, the assessment of the company designated doctor is binding.^[30]

In the Resolution^[31] dated June 3, 2009, the CA denied the motion for