

## SECOND DIVISION

[ G.R. No. 198367, August 06, 2014 ]

**OSG SHIPMANAGEMENT MANILA, INC., MERCEDES M. RAVANOPOLOUS, OSG SHIPMANAGEMENT (UK) LTD. & M/T DELPHINA, PETITIONERS, VS. JOSELITO B. PELLAZAR, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

For resolution is the present petition for review on *certiorari*,<sup>[1]</sup> assailing the decision<sup>[2]</sup> dated May 12, 2011 and resolution<sup>[3]</sup> dated August 24, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 108877.

#### The Antecedents

In September 2006, the respondent Joselito B. Pellazar (*Pellazar*), an oiler in the vessel *M/T Delphina*, filed a **complaint for permanent total disability benefits and damages** against the petitioners,<sup>[4]</sup> local manning agent C.F. Sharp Crew Management (*C.F. Sharp*) and its President, Arturo Rocha. The complaint was amended to include C.F. Sharp's principal, OSG Ship Management (UK) Ltd., operated by Mercedes Ravanopoulos (*Ravanopoulos*). The petitioners manifested that the Philippine Overseas Employment Administration (*POEA*) accreditation of the *M/T Delphina* had been transferred to OSG Ship Management Manila, Inc. (*OSG Manila*) and, that in accordance with *POEA* procedures, *OSG Manila* assumed full responsibility for all contractual obligations to seafarers incurred by C.F. Sharp.

Pellazar was deployed to the *M/T Delphina* on July 3, 2005 under an employment contract for eight months. On November 12, 2005, while he was on duty onboard the vessel, **his right hand was injured after it was struck by a solid iron pipe**. He was given medical attention in a hospital in Brazil. On November 26, 2005, **he was medically repatriated**.

Upon his arrival in Manila, Pellazar reported to *OSG Manila* and was referred on November 29, 2005 to the company-designated physicians, Dr. Pedro S. De Guzman (*Dr. De Guzman*) and Dr. Raymond C. Banaga (*Dr. Banaga*) of the Physicians' Diagnostic Services Center, Inc. Dr. De Guzman was also the Medical Director of the Center while Dr. Banaga was Pellazar's attending physician. Pellazar's working diagnosis was "*complete fracture, distal part of 5<sup>th</sup> finger, right hand post-casting.*" He continued to report to the company-designated physicians until August 14, 2006<sup>[5]</sup> for evaluation and treatment.

For the duration of Pellazar's treatment and evaluation, he was subjected to an x-ray examination (his right finger), went through therapy sessions and was referred to an

orthopedic specialist, as well as a physiatrist. He also underwent surgery (removal of pin, 5th digit, right hand) at the Dr. Fe del Mundo Medical Center Foundation Philippines, Inc.<sup>[6]</sup> The company-designated physicians gave Pellazar a Grade 10 disability rating<sup>[7]</sup> for *"loss of grasping power for large objects between fingers and palm of one hand."*<sup>[8]</sup>

On September 30, 2006, Pellazar consulted a physician of his choice, Dr. Raul F. Sabado (*Dr. Sabado*) of the Dagupan Orthopedic Center in Dagupan City, who diagnosed him with *"loss of grasping power of 5th finger, loss of opposition between finger and thumb (r) and ankylosis of the 5<sup>th</sup> finger (r),"* and certified that he was "permanently unfit for any sea duty."<sup>[9]</sup> In addition to Dr. Sabado's certification, Pellazar claimed that despite the lapse of 120 days, and the fact that he had already undergone maximum medical care, he was still unfit for sea work; thus, the complaint for disability benefits under the Collective Bargaining Agreement (CBA).<sup>[10]</sup>

The petitioners denied liability. They asked that the complaint be dismissed for prematurity. They alleged that Pellazar, a member of the Associated Marine Officers' and Seamen's Union of the Philippines (*AMOSUP*) bypassed the provisions of the CBA requiring that a seafarer with a complaint should follow the grievance procedure onboard the vessel or, through the union upon his return home. Further, under the POEA-approved contract, the parties covered by a CBA are required to submit their claim or dispute to a voluntary arbitrator or panel of voluntary arbitrators. Pellazar, they argued, failed to comply with his duty to observe the dispute resolution provisions of the CBA.

The foregoing notwithstanding, the petitioners argued that Pellazar was not entitled to disability compensation higher than what was provided under a Grade 10 disability rating as that was the company-designated physician's assessment of his disability. A Grade 10 disability is compensated US\$10,075.00 under the POEA Standard Employment Contract (*POEA-SEC*).

### **The Compulsory Arbitration Rulings**

In a decision<sup>[11]</sup> dated April 23, 2007, Labor Arbiter Florentino R. Darlucio ruled in Pellazar's favor and awarded him permanent total disability benefits of US\$75,000.00 under the parties' CBA, plus \$7,500.00 as attorney's fees, to be paid, jointly and severally, by OSG Manila, OSG (UK), Ravanopoulos and *M/T Delphina*. LA Darlucio held that Pellazar was entitled to permanent total disability benefits since he had been incapacitated to continue his employment as a seafarer.

The petitioners appealed. In its decision<sup>[12]</sup> of November 29, 2008, the National Labor Relations Commission (*NLRC*) modified the labor arbiter's decision. It ruled that Pellazar is entitled only to an award of \$10,075.01 which is the equivalent of a Grade 10 disability in accordance with the disability rating given to him by the company-designated physicians; the loss of grasping power for large objects between the fingers and palm of a hand has been classified as Grade 10 disability under the *POEA-SEC*.

The *NLRC* gave more weight to the assessment of the company-designated

physicians, particularly Dr. Banaga, over that of Dr. Sabado who examined Pellazar for only a day. It stressed that it was Dr. Banaga who painstakingly treated Pellazar for a reasonable period of time. Through the extensive medical attention given to Pellazar, the NLRC emphasized, Dr. Banaga acquired a detailed knowledge and familiarity with Pellazar's injury which enabled him to arrive at a more accurate appraisal of Pellazar's condition as compared to Dr. Sabado who had not been privy to Pellazar's case from the very beginning.

Pellazar moved for reconsideration, but the NLRC denied the motion in its resolution of February 27, 2009,<sup>[13]</sup> prompting him to seek relief from the CA through a petition for *certiorari*.

In its decision under review, the CA granted the petition, reversed the challenged NLRC rulings and, reinstated LA Darlucio's award of permanent total disability benefits to Pellazar thereby disregarding the Grade 10 disability rating—in accordance with the POEA-SEC—of the company-designated physicians. ***It stressed that permanent total disability is not determined by gradings but by the number of days the disability has lasted.*** It explained that under Article 192 of the Labor Code, a disability shall be deemed total and permanent if the temporary disability has lasted for more than a continuous period of 120 days and this is the concept of permanent total disability that the Supreme Court has applied in ***Wallem Maritime Services, Inc. v. NLRC***,<sup>[14]</sup> reiterated in subsequent cases as ***Crystal Shipping, Inc., v. Natividad***<sup>[15]</sup> and lately, ***Oriental Shipmanagement Co., Inc. v. Bastol***.<sup>[16]</sup> The petitioners moved for reconsideration, but the CA denied the motion in its resolution of August 24 2010;<sup>[17]</sup> hence, the present petition.

### **The Petition**

The petitioners seek a reversal of the NLRC rulings on the following grounds:

1. The CA committed a serious error of law when it automatically declared Pellazar permanently and totally disabled for the reason that he had been unable to work for more than 120 days from his repatriation. In making such a conclusion, the CA disregarded the provisions of the POEA-SEC and the CBA on a seafarer's entitlement to disability compensation.

Under Section 20 (B) 3 of the POEA-SEC, it is the company-designated physician who determines the fitness to work or the disability of a seafarer as a result of a work-related injury or illness. Under Section 20 (B) 6, in case of permanent total or partial disability, the seafarer shall be compensated in accordance with the schedule of benefits (impediment grades with the corresponding amount of compensation) enumerated in Section 32 of the same document; computation of his benefits shall be governed by the rates and rules of compensation applicable at the time the illness or injury was contracted.

Also, under Section 20.1.5 of the CBA which Pellazar himself cited in his submissions, the certification that a seafarer is permanently unfit for further sea service in any capacity is lodged solely and exclusively with the company doctor. A seafarer assessed at less than 50% disability grading shall be entitled to full disability benefits of US \$75,000.00 only if the company doctor certifies that he is permanently unfit to work. There was no such certification in Pellazar's case as he

was given only a disability Grade 10 rating by Drs. De Guzman and Banaga.

2. The assessment of the company-designated physicians with respect to Pellazar's condition or disability should be accorded respect not only because they are the ones entrusted in providing medical care and declaring Pellazar's fitness for work, but also because of the amount of time and effort they spent in treating and evaluating him. Pellazar's treatment and evaluation involved surgery, physical therapy and constant medical attention and close observation, as compared with the "single and fleeting medical treatment" of Pellazar by Dr. Sabado, his chosen physician.

3. The award of attorney's fees to Pellazar is not warranted in the absence of bad faith in their denial of his claim for permanent total disability compensation. From the inception of Pellazar's medical repatriation, they have extended unconditional support to him providing him immediate medical treatment and prompt payment of illness wages. The company-designated physicians, complemented by a team of specialists, took care of him for the entire duration of his evaluation and treatment and issued to Pellazar a Grade 10 disability rating which petitioners have no reason to doubt in the absence of evidence that their findings were arrived at arbitrarily or fraudulently.

### **The Case for Pellazar**

In his Comment,<sup>[18]</sup> Pellazar prays that the petition be denied for lack of merit. He contends that the CA committed no palpable error or grave abuse of discretion in reinstating the labor arbiter's decision as it was supported by substantial evidence.

Pellazar insists that his chosen physician, Dr. Sabado, certified him to be totally unfit for sea duty because of the right hand injury which he sustained while in the employ of the petitioners. He maintains that the injury had never been resolved and even deteriorated despite medical treatment by the doctors for more than 120 days making his disability permanent and total not only under the POEA-SEC but also under the Labor Code, as well as jurisprudence, citing **Wallem Maritime Services, Inc. v. NLRC**.<sup>[19]</sup>

Pellazar contends that he is not precluded from seeking a second opinion as the POEA-SEC does not exclusively provide that only the company-designated physician can evaluate and treat a seafarer who sustained an injury or illness. He submits that the assessment of the company-designated physician is not binding on the courts.

### **The Court's Ruling**

**We grant the petition.**

#### ***Preliminary considerations***

***a. Certiorari under Rule 65 before the CA and appeal under Rule 45 before the Court***

In a Rule 45 petition for review of the CA decision, which was rendered under a Rule 65 proceeding, what the Court determines is the legal correctness of the CA decision, *i.e.*, whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision brought before it - not whether the NLRC decision on the merits of the case was correct. In ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it.

From the substantive point of view, the CA may not go beyond the determination of whether the NLRC's decision is tainted with grave abuse of discretion because the ruling that is brought before it is already a final and executory ruling of the NLRC, there being no appeal provided for under the law. Accordingly, the Court generally accords respect to the NLRC's factual findings and its conclusions from these findings since the absence of an appeal from the NLRC's ruling is a statutory recognition of the labor tribunals' expertise on the field of labor standards, labor relations and allied legislation.

The substantive justification goes hand in hand with the procedural justification. From the procedural point of view, the CA has a limited scope in reviewing the NLRC decision because of the intrinsic limitation of the sole available remedy itself. A writ of *certiorari* is a remedy that lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion - and not mere errors of judgment. For emphasis therefore, when a petition for certiorari is filed, the judicial inquiry should be limited to the issue of whether the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction<sup>[20]</sup> - and not whether the NLRC ruling is intrinsically correct or not.<sup>[21]</sup>

Given this framework, the Court finds that the CA legally erred in its determination of the presence or absence of grave abuse of discretion.

## ***Substantive Considerations***

### ***A. Disability benefits as a matter of contract and law***

#### **1. Mere lapse of the 120 day period does not warrant payment of permanent total disability benefits**

Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings but, by Philippine law and by the contract between the parties.

The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.

By contract, Department Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract) and the parties' CBA bind the seaman and his employer to each other. The terms under the POEA-SEC are to be read in accordance with what the Philippine law provides.

In *Vergara v. Hammonia Maritime Services*,<sup>[22]</sup> the Court interpreted the interplay