

## SECOND DIVISION

[ G.R. No. 209201, November 19, 2014 ]

**NEW FILIPINO MARITIME AGENCIES INC., ST. PAUL MARITIME CORP., AND ANGELINA T. RIVERA, PETITIONERS, VS. MICHAEL D. DESPABELADERAS, RESPONDENT.**

### D E C I S I O N

#### **MENDOZA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 30, 2013 Decision<sup>[1]</sup> and the September 19, 2013 Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA G.R. SP. No. 120693, entitled "*Michael D. Despabeladeras v. National Labor Relations Commission (2<sup>nd</sup> Division), New Filipino Maritime Agencies Inc., St. Paul Maritime Corp., and Ms. Angelina T. Rivera,*" a case for disability compensation and other claims.

#### **The Facts**

Respondent Michael D. Despabeladeras (*Michael*) was hired by petitioner New Filipino Maritime Agencies Inc., for and in behalf of its principal, St. Paul Maritime Corp. (*petitioners*), as Wiper to work on board the vessel M/V "ATHENS HIGHWAY" for a period of nine (9) months, with a basic monthly salary of US\$415.00.<sup>[3]</sup>

Prior to embarkation, Michael underwent the required Pre-Employment Medical Examination (*PEME*) and was declared "Fit for Sea Service" by the company doctor.

On April 26, 2009, Michael joined the assigned vessel.

On August 20, 2009, while going down the stairs of the vessel to get some tools to be used for dismantling the engine's piston, Michael slipped and fractured his left hand.

A few days after the incident, Michael experienced severe pain and swelling in his left wrist. He was brought to the nearest hospital in Brunswick, Georgia, where he was diagnosed with "Ulna Styloid Fracture, Left Wrist."<sup>[4]</sup>

On August 28, 2009,<sup>[5]</sup> Michael was repatriated to the Philippines for better medical treatment and management. Upon arrival in Manila on August 31, 2009,<sup>[6]</sup> he was referred to the company-designated physician, Dr. Nicomedes G. Cruz (*Dr. Cruz*). Later on, Dr. Cruz endorsed Michael to an orthopedic surgeon. Michael's medical treatment was supervised by Dr. Cruz from August 2009 until February 10, 2010. Despite continuous treatment under the care of Dr. Cruz, Michael alleged that his medical condition did not improve. This prompted him to consult another physician, Dr. Rogelio C. Catapang, Jr. (*Dr. Catapang*), who declared him unfit to resume his

duties as a seaman on January 16, 2010.<sup>[7]</sup>

Michael's check-up with the orthopedic surgeon on February 3, 2010 showed minimal pain on the left hand, but he was advised to continue with his medical therapy. Michael went back for his check-up on February 10, 2010, and he was asked to return for a follow-up check up on February 17, 2010. He failed to return on the said date.<sup>[8]</sup> Instead, he demanded that he be paid disability benefits.

After his demand for payment of disability benefits was refused, Michael filed a complaint for disability compensation and other monetary claims before the National Labor Relations Commission (NLRC).

On September 9, 2010, the Labor Arbiter (LA) ruled in favor of Michael and awarded his claim for permanent total disability benefits under the CBA. The LA found Michael entitled to the award as he was unable to perform his customary job for more than 120 days due to the injury sustained while performing his duty on board petitioners' vessel. The LA concluded that Michael did not abandon medical treatment and could not be faulted for not returning to the company-designated physician who failed to assess him of rightful disability grading after treatment of more than five months. The *fallo* of the LA decision, docketed as NLRC Case No. (M) 01-00595-10, reads:

**WHEREFORE**, premises considered, judgment is hereby rendered ordering Respondents to pay complainant the amount of US\$89,100.00 representing his permanent total disability benefit, plus 10% of the said amount as and by way of attorney's fees.

**SO ORDERED.**<sup>[9]</sup>

On appeal, the NLRC *reversed* the LA decision, reasoning out that there was no positive proof warranting the award of disability benefits because there was no assessment of any disability grading by Dr. Cruz. It did not give credence to the medical report of Dr. Catapang because it was issued after a single medical consultation and did not indicate the kind of examination conducted to accurately assess his medical condition. Moreover, the NLRC found that Michael did not complete his medical treatment in violation of the post-medical treatment provision in the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC). The NLRC disposed:

**WHEREFORE**, the appeal is hereby GRANTED. The assailed Decision dated September 9, 2010, is hereby REVERSED and SET ASIDE and a new one is being entered dismissing the complaint for lack of merit.

**SO ORDERED.**<sup>[10]</sup>

Michael filed a motion for reconsideration but it was denied by the NLRC. Thereafter, Michael filed a petition with the CA.

In its May 30, 2013 Decision, the CA reversed the NLRC and sustained the LA award of permanent total disability benefits. The CA applied the 120-day Presumptive Disability Rule. It took note of the fact that Michael had exceeded the period within which he was initially considered on temporary total disability. The CA brushed aside the conclusion of the NLRC that the award of disability benefits was unjustified in

the absence of disability grading. It stated that the absence of any grading at the onset of Michael's disability or absence of any assessment by Dr. Cruz that he was still unfit to work was of no moment, as disability should be understood more on the loss of earning capacity rather than on the medical significance of the disability. The CA cited the case of *Palisoc v. Easways Marine, Inc.*,<sup>[11]</sup> where even in the absence of an official finding by the company-designated physician that the seafarer suffered a disability and was unfit for sea duty, the seafarer may still be declared to be suffering from a permanent disability if he was unable to work for more than 120 days. It added that what clearly determined the seafarer's entitlement to permanent disability benefits was his inability to work for more than 120 days. It emphasized that in *Valenzona v. Fair Shipping Corporation (Valenzona)*,<sup>[12]</sup> the seafarer's disability was still considered permanent and total despite declaration by the company-designated physician of the seafarer's fitness to work as such declaration was made belatedly, that is, more than 120 days after repatriation. The decretal portion of the CA decision reads:

WHEREFORE, in the light of the foregoing, the instant petition is GRANTED. The *Decision* dated 31 March 2011 of the National Labor Relations Commission (NLRC) and its Resolution dated 31 May 2011 are hereby REVERSED and SET ASIDE. Private respondents are held jointly and severally liable to pay petitioner: a) permanent total disability benefits of US\$ 89,100.00 or its peso equivalent at the time of actual payment; and b) attorney's fees of ten percent (10%) of the total monetary award or its peso equivalent at the time of actual payment.

SO ORDERED.<sup>[13]</sup>

Petitioners moved for a reconsideration of the said decision, but their motion was denied by the CA in its Resolution, dated September 19, 2013.

Hence, petitioners filed this petition anchored on the following

#### ERRORS:

##### I.

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN APPLYING THE 120 DAYS RULE DESPITE JURISPRUDENCE ABANDONING THE SAME.

##### II.

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN DISREGARDING THE UNDISPUTED FACT THAT THE COMPANY-DESIGNATED PHYSICIAN WAS RESTRAINED FROM ISSUING ASSESSMENT DUE TO RESPONDENT'S MEDICAL ABANDONMENT.

##### III.

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN DEVIATING FROM THE RULING OF THIS

The sole issue to be resolved is whether Michael was entitled to disability benefits for failure to perform his pre-injury duties as seaman for more than 120 days.

Petitioners contend that the 120-day rule applied by the CA as basis for granting Michael's permanent total disability benefits was already abandoned and no longer controlling. In support of their position, petitioners cited the cases of *PHILASIA Shipping Agency Corporation, Inc. v. Tomacruz*,<sup>[15]</sup> citing *Vergara v. Hammonia Maritime Services, Inc.*(*Vergara*),<sup>[16]</sup> and *Santiago v. Pacbasin Shipmanagement, Inc.*(*Pacbasin*),<sup>[17]</sup> where it was clarified that the temporary total disability period of 120 days may be extended up to a maximum of 240 days. Thus, petitioners claim that the seafarer's cause of action arises only after the lapse of a maximum 240-day period.

Petitioners add that Michael's failure to complete his medical treatment with Dr. Cruz prevented the latter from issuing a final assessment of his disability, and thus, caused him to lose his right to be entitled to disability compensation. Petitioners relied on the case of *Magsaysay Maritime Corporation v. National Labor Relations Commission*,<sup>[18]</sup> where it was held that abandonment by a seafarer of his medical treatment with the company-designated physician resulted in the denial of his disability claim.

There being no medical evidence to prove that he was suffering from disability, petitioners argued that Michael had no cause of action at the time he filed his complaint.

Petitioners assert that the award of attorney's fees was without basis. According to them, even if a claimant was compelled to litigate or to incur expenses to protect his rights, attorney's fees may still not be awarded in the absence of a clear showing of bad faith.

#### *Respondent's Position*

In his Comment,<sup>[19]</sup> Michael counters that the 120-day period in *Valenzona*<sup>[20]</sup> applies to him. He asserts what determines a seafarer's permanent disability is his inability to resume his customary work for a period of 120 days, notwithstanding any fit-to-work declaration or impediment rating issued by the company-designated physician, as has been fortified in the recent cases of *Wallem Maritime Services, Inc. v. Tanawan* (*Wallem Maritime Services*),<sup>[21]</sup> and *Kestrel Shipping Co., Inc. v. Munar* (*Kestrel Shipping*).<sup>[22]</sup> Michael adds that petitioners' reliance on the *Vergara* and *Pacbasin* cases, among others, was misplaced.

Michael claims that his failure to return for treatment could not be considered an abandonment that would warrant the forfeiture of his right to disability claims. According to him, the failure of Dr. Cruz to render an assessment of his fitness to work or permanent disability within the period of 120 days with his medical condition remained unresolved, made him totally and permanently disabled. In his case, the 120<sup>th</sup> day fell on December 26, 2009, which he counted from the time he

was repatriated on August 28, 2009. He explains that his failure to report to the company doctor on February 17, 2010, was already beyond the 120-day period. There is, therefore, no abandonment as he was already deemed permanently and totally disabled. He contends that it is the failure to observe the mandatory 3-day reporting requirement under Section 20-B of the POEA-SEC that can result to a forfeiture of the right to claim the said benefits.

Michael further argues that he is entitled to attorney's fees because petitioners refused in bad faith to acknowledge their accountability both under their contract and the law, compelling him to litigate.

### *Reply of Petitioners*

Petitioners, in their Reply,<sup>[23]</sup> reiterate that the 120-day rule was already modified pursuant to the Court's pronouncement in *Vergara* that the rule should be applied depending on the circumstances of the case. In Michael's case, the 120-day rule lost its significance when he refused to undergo further treatment under Dr. Cruz, thereby violating the procedure under the POEA-SEC. Michael's claim for disability benefits must, therefore, fail.

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

The Court finds merit in the petition.

The CA's conclusion that Michael was entitled to permanent total disability benefits on the basis of his inability to perform his sea duties for more than 120 days cannot be justified under the prevailing circumstances. The 120-day rule, as aptly posited by petitioners, has already been clarified in *Vergara* where it was declared that the 120-day rule could not simply be applied as a general rule for all cases and in all contexts. In other words, it cannot be used as a cure-all formula for all maritime compensation cases. *Vergara's* application depends on the circumstances of the case, especially the parties' compliance with their contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists.<sup>[24]</sup>

In this regard, the Court quotes with approval the ruling of the NLRC, thus:

Anent the period of medical treatment, We are not oblivious of the 120 days principle cited by the Labor Arbiter in the Decision; however, the particular circumstances of this case merit different approach.

The records firmly established that complainant was diagnosed of "Ulna Styloid Fracture," commonly known as wrist fracture and as a definitive medical treatment, he underwent physical therapy sessions. We are convincingly swayed that such injury requires medical treatment for a period more than 120 days. Thus, to our mind, the ruling in *Vergara vs. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.*, G.R. No. 172933, October 6, 2008, extending the period of treatment to 240 days is more prudent and apropos in this case. Short-changing complainant's medical treatment to mere 120 days will be depriving him of realistic cure, which the POEA SEC envisioned in requiring mandatory post-employment medical examinations.<sup>[25]</sup> [Underscoring supplied]