

## SECOND DIVISION

**[ G.R. No. 186509, July 29, 2013 ]**

**PHILMAN MARINE AGENCY, INC. (NOW DOHLE-PHILMAN MANNING AGENCY, INC.) AND/OR DOHLE (IOM) LIMITED, PETITIONERS, VS. ARMANDO S. CABANBAN, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

We resolve in this petition for review on *certiorari*<sup>[1]</sup> the challenge to the December 10, 2008 decision<sup>[2]</sup> and the February 18, 2009<sup>[3]</sup> resolution of the Court of Appeals (CA) in CA-G.R. SP No. 105079 setting aside the February 29, 2008 decision<sup>[4]</sup> and the June 10, 2008 resolution<sup>[5]</sup> of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. OFW (M) 03-07-1666-00, NLRC NCR CA No. 043223-05. The reversed NLRC decision affirmed the December 29, 2004 decision<sup>[6]</sup> of the Labor Arbiter (LA) dismissing the complaint filed by respondent Armando S. Cabanban against Philippine Transmarine Carriers, Inc. (PTCI), later on substituted by petitioner Philman Marine Agency, Inc. (*Philman*), Carlos Salinas and petitioner DOHLE (IOM) Limited (*DOHLE*).

#### **The Factual Antecedents**

On September 15, 2002, Armando entered into a nine-month contract of employment<sup>[7]</sup> with DOHLE, through its local agent PTCI. He was assigned to work as a 2<sup>nd</sup> mate on board the vessel "INGA-S." His basic monthly salary was US\$966.00 on a 48-hour workweek, with a fixed overtime pay of US\$581.00 a month and vacation leave pay of US\$161.00 for five days per month.

On September 9, 2002, Armando underwent the requisite pre-employment medical examination (*PEME*) at PTCI's accredited medical clinic,<sup>[8]</sup> which found him fit for sea service.<sup>[9]</sup> During his medical examination, he declared that he had no history of high blood pressure and heart trouble, and had not previously consulted any doctor relative to any disease.<sup>[10]</sup> Armando was deployed on October 14, 2002.

On February 9, 2003, while on board the vessel "INGA-S," Armando felt dizzy and complained of chest pain. He was immediately brought to the Fujairah Port Clinic, UAE, and was admitted to the Coronary Care Unit after an initial diagnosis of "Unstable Angina."<sup>[11]</sup> On February 13, 2003, Armando was discharged from the hospital but was re-admitted four days after due to recurrent angina at rest. On February 21, 2003, Dr. Mohamed Dipti Ranjan, the Chief Medical Officer of Fujairah Port Clinic, UAE, stated in Armando's medical report that "[h]e is a known case of HT, on atenolol 50 mg od [for five years]."<sup>[12]</sup>

On February 22, 2003, Armando underwent Cardiac Catheterisation and Angiography to check for damages to his coronary arteries. The result of the angiography indicated "[e]ssentially normal coronary arteries with good left ventricular function."<sup>[13]</sup> The final diagnosis of Armando's illness, issued on February 23, 2003, stated "Microvascular Unstable Angina Class III B established on medical treatment, Type II-A Hyperlipidemia,

HT, Obesity, Alcoholism.” Dr. Ranjan gave the following treatment and advice:<sup>[14]</sup>

1. Medications as advised.
2. Unfit for duty for 4 weeks from today.
3. Fit for air travel.
4. Repatriation on Medical ground.
5. Risk stratification after 3 weeks by TMT/Stress Thallium 201/Technetium 99/ sestambi scan.

Following Dr. Ranjan’s recommendation, the petitioners repatriated Armando on medical ground. Armando arrived in the Philippines on February 23, 2003 and upon instruction, he proceeded to PTCI’s company-designated physician, Dr. Natalio Alegre II, at the St. Luke’s Medical Center. Dr. Alegre treated Armando and monitored his condition for three months. During the course of the treatment, Armando underwent several laboratory tests,<sup>[15]</sup> which included an ECG, CR-M, Troponin, spirometry and cardiac imaging. After the three-month close monitoring, treatment and consultation with the attending cardiologist, Dr. Marietta Crisostomo, Dr. Alegre declared Armando “fit to work” on May 12, 2003.<sup>[16]</sup>

Despite the certification of Dr. Alegre as to Armando’s fitness to resume work, Armando nevertheless claimed otherwise. In a letter<sup>[17]</sup> dated June 25, 2003, Armando demanded from PTCI payment of permanent disability benefits under the Philippine Overseas Employment Agency Standard Employment Contract (*POEA-SEC*).

The petitioners did not heed Armando’s demand, prompting Armando to file, on July 4, 2003, a complaint<sup>[18]</sup> against the petitioners for injury/illness compensation benefit under a disability grade of 7, according to the POEA-SEC, in the amount of US\$20,900.00. In the complaint, he indicated “Coronary Artery Disease” (*CAD*) as the ground for his claim for disability benefits. Armando also sought payment of the balance of his sickness allowance equivalent to two months, unpaid/underpaid salary amounting to US\$966.00, vacation leave pay, sick leave pay, moral and exemplary damages, and attorney’s fees. On September 9, 2003, Armando amended his complaint<sup>[19]</sup> to include “hypertension, hyperlipidemia, obesity and alcoholism” as grounds for his disability benefits claim.

On August 11, 2003, Armando went to the UST Hospital and consulted Dr. Patrick Gerard L. Moral (Internal Medicine, Pulmonary Disease and Sleep Breathing Disorders). Dr. Moral issued a medical certificate<sup>[20]</sup> diagnosing Armando with “Coronary Heart Disease, Hypertension and Dyslipidemia,” and gave him a disability grade of “7” based on the POEA disability grading schedule under the POEA-SEC.

On August 27 and 29, 2003, Armando visited the Philippine General Hospital and consulted Dr. Antonio L. Dans (Internal Medicine and Cardiology). Dr. Dans diagnosed Armando with “Gastroesophageal reflux, Hypertension and Dyslipidemia.”<sup>[21]</sup> On September 4, 2003, Armando visited Dr. Cayetano Reyes, Jr. (General Surgeon, Obstetrician and Gynecologist) at the Reyes Medical Maternity Center who diagnosed him with “essential hypertension and coronary heart disease.”<sup>[22]</sup> On September 26, 2003, a fourth personal physician, Dr. Renato Matawaran (Internal Medicine) of the Holy Rosary Medical Specialty Clinic, concurred with the hypertension and coronary heart disease diagnosis and similarly gave Armando a disability grade of “7.”<sup>[23]</sup> Armando subsequently presented these medical certificates before the LA.

In their position paper<sup>[24]</sup> and amended position paper,<sup>[25]</sup> the petitioners denied any liability to Armando for disability benefits under the POEA-SEC. They pointed out that Dr.

Alegre has already declared him fit to work following the “normal” results of his laboratory tests.

The petitioners also disagreed with Armando’s computation of his sickness allowance at 120 days. The petitioners argued that since Dr. Alegre had already declared Armando fit to work on May 12, 2003, following the provisions of the POEA-SEC, Armando’s sickness allowance should be counted at only ninety-two (92) days, that is, beginning February 10, 2003 when Armando disembarked/signed off from the vessel, until May 12, 2003. As they had already paid Armando’s final wages up to February 9, 2003 and his sickness allowance for the period covering February 10, 2003 until April 1, 2003, Armando is thus entitled to receive only P68,560.30, representing the balance of his sickness allowance covering the period of April 2, 2003 until May 12, 2003.

Per its Manifestation and Motion filed on September 25, 2003, Philman substituted PTCI. [26]

In a decision dated December 29, 2004, [27] the LA dismissed Armando’s claims except for the balance of the latter’s sickness allowance in the amount of P68,560.30. In ruling for the petitioners, the LA declared that the petitioners had fully complied with their liabilities to Armando for the work-related injury/illness suffered by the latter during the term of the contract, pursuant to the POEA-SEC. The LA noted that the petitioners’ company-designated physician declared Armando fit to work after three months of monitoring and treatment, in contrast with Armando’s chosen physicians who arrived at their diagnosis after only one day of consultation. The findings and declaration of Dr. Alegre, which Armando did not question, therefore binds the latter and bars his claim for disability benefits. Armando appealed the decision with the NLRC. [28]

### ***The Ruling of the NLRC***

In its February 29, 2008 decision, [29] the NLRC dismissed Armando’s appeal for lack of merit. As the LA did, the NLRC upheld the certification of fitness to work issued by Dr. Alegre over the various medical certificates Armando presented. The NLRC noted that the diagnosis of the several private doctors consulted by Armando was based merely on a review of Armando’s medical history and not the result of a thorough examination, treatment and monitoring similar to that undertaken by Dr. Alegre. The NLRC concluded that absent proof that the certification of fitness to work was irregularly issued or did not reflect his actual condition, Armando’s claim for disability benefits under the POEA-SEC is without merit.

When the NLRC denied, in its June 10, 2008 resolution, [30] his motion for reconsideration, [31] Armando filed with the CA a petition for *certiorari* [32] under Rule 65 of the Rules of Court.

### ***The Ruling of the CA***

In its December 10, 2008 decision, [33] the CA reversed the NLRC’s decision and ordered the petitioners to pay Armando the following: (1) total and permanent disability benefits in the amount of US\$20,900.00 at its peso equivalent at the time of actual payment; (2) the balance of the sickness allowance in the amount of US\$2,189.60 at its peso equivalent at the time of actual payment; and (3) attorney’s fees.

In granting Armando’s claims, the CA declared that all of the conditions laid out under Section 32-A of the POEA-SEC for an occupational disease to be compensable had been satisfied, namely: that Armando’s disability resulted from CAD and essential hypertension,

both of which arose during the period of the contract; that both CAD and hypertension are work-related; and that both are compensable illnesses pursuant to Section 32-A of the POEA-SEC. The CA made the following observations: (1) Armando was declared fit for sea service in his PEME result which sufficiently proves that his work-related illness occurred during the term of his contract; (2) the petitioners failed to rebut the disputable presumption laid out under Section 20-B of the POEA-SEC that though not listed as an occupational disease, Armando's CAD is presumed work-related; and (3) the findings of the company-designated physician are not conclusive, do not bind Armando, the labor tribunals and even the courts, and do not prevent Armando from seeking a second opinion.

The CA added that while Armando may have concealed his five-year history of hypertension, this alone was not sufficient to disqualify Armando from claiming disability benefits under the POEA-SEC. Moreover, the law does not require absolute or direct causal connection between the illness and the work; that the work contributed even to a small degree to the development of the disease is enough to warrant compensation.

Finally, the CA ruled that the term "disability" in claims for compensation and disability benefits should be understood as mere loss of earning capacity. The law does not require that the illness be incurable or that the employee be absolutely disabled or paralyzed for the disability to be considered total and permanent, but only that the employee was unable to perform the usual work and earn from it for more than 120 days.

The CA's denial of the petitioners' motion for reconsideration<sup>[34]</sup> in its February 18, 2009 resolution<sup>[35]</sup> prompted the present petition.

### **The Petition**

In their present petition, the petitioners argue that the CA committed grave abuse of discretion in: (1) disregarding the factual findings of the LA and of the NLRC; (2) upholding the findings of the private doctors over those of the company-designated physician; and (3) awarding Armando attorney's fees.

Directly addressing the CA's ruling, the petitioners argue that the disability benefits under the POEA-SEC are not automatically granted. To be entitled, the seafarer must show that the illness or injury occurred during the term of the contract and that it is work-related. To the petitioners, Armando failed to prove these requirements, as his medical records during and soon after his employment did not show that he ever suffered from CAD during the term of the contract.

The petitioners added that since Dr. Alegre has declared Armando fit to work, Armando was bound by such declaration, pursuant to Section 20-B, paragraphs 2 and 3 of the POEA-SEC. Citing the Court's declarations, the petitioners argue that the doctor most qualified to assess Armando's disability grade is the doctor who regularly monitored and treated his health, which, in this case, was the company-designated physician – Dr. Alegre.

Further, the petitioners contend that "hypertension, hyperlipidemia, obesity and alcoholism," which Armando added as grounds for his claim for disability benefits, were the direct result of his willful acts and wrong lifestyle choice for which he alone should be held responsible. As these are not work-related, they are not compensable under the POEA-SEC.

The petitioners also posit that Armando's hypertension was not even acquired during the term of the latter's contract but was a pre-existing condition which he did not disclose during his PEME. And while hypertension is listed as an occupational disease under Section 32-A, paragraph 20, Armando's willful concealment of this information in his PEME disqualifies him from claiming benefits under the POEA-SEC, pursuant to its Section 20-E.

Assuming that this concealment does not disqualify Armando from claiming benefits, he still failed to present, by laboratory test results, that his hypertension impaired the functions of his body organs, as required by Section 32-A.

Finally, the petitioners take exception to the CA's award of sickness allowance counted at 120 days instead of 92 days. They argue that Dr. Alegre declared Armando fit to work on May 12, 2003; hence, the sickness allowance should be counted only until this date, or a total of 92 days counted from February 10, 2003 when he disembarked from the vessel. They also question the award of attorney's fees for Armando's failure to prove bad faith on their part.

### **The Case for the Respondents**

Relying on the ruling of the CA, Armando contends<sup>[36]</sup> that a seafarer's entitlement to disability benefits automatically accrues by reason of death or illness. He argues that in claims for disability benefits under the POEA-SEC, the presumption of compensability and aggravation of the illness exists as long as the illness occurred during the term of the contract. The employer has the burden to rebut these presumptions which, in this case, the petitioners failed to do. For Armando, his various medical records more than adequately proved that his illness arose during the term of his contract, that such illness is work-related, and that the nature of his work and the risk factors with which he was exposed to during such employment aggravated his illness. Armando points out that the factors that contributed to his permanent disability are all related to his work and the primary and antecedent causes of his illness are listed as occupational diseases under Section 32-A of the POEA-SEC.

Further, Armando contends that since the PEME is exploratory, his clean bill of health after undergoing the PEME and prior to his employment proves that his illness occurred during, and was aggravated by, his employment. Lastly, Armando insists that the petitioners are liable for attorney's fees for their bad faith in refusing to pay his duly proved claim for disability benefits.

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

We resolve to **GRANT** the petition.

#### ***Preliminary Considerations***

At the outset, we emphasize the settled rule that only questions of law are allowed in a petition for review on *certiorari*.<sup>[37]</sup> This Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to perceived legal errors that the CA may have committed in issuing the assailed decision,<sup>[38]</sup> in contrast with the review for jurisdictional errors that we undertake in an original *certiorari* action.<sup>[39]</sup> In reviewing the legal correctness of the CA decision in a labor case taken under Rule 65 of the Rules of Court, we examine the CA decision in the context that it determined the presence or the absence of a grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision, on the merits of the case, was correct.<sup>[40]</sup> In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.<sup>[41]</sup>

Viewed in this light, we do not re-examine the factual findings of the NLRC nor do we substitute our own judgment for theirs<sup>[42]</sup> as findings of fact of labor tribunals are generally conclusive on this Court. As presented by the petitioners, the issues raised before us require the re-evaluation of the evidence on record and consideration of the applicable