

## THIRD DIVISION

[ G.R. No. 194677, April 18, 2012 ]

**ALEN H. SANTIAGO, PETITIONER, VS. PACBASIN  
SHIPMANAGEMENT, INC. AND/OR MAJESTIC CARRIERS, INC.,  
RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review under Rule 45 of the Rules of Court assailing the February 11, 2010 Decision<sup>[1]</sup> of the Court of Appeals (CA), in CA-G.R. SP. No. 108035, which affirmed the April 25, 2008 Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC). The NLRC affirmed with modification the December 29, 2006 Decision<sup>[3]</sup> of the Labor Arbiter (LA) in NLRC OFW Case No. (M) 06-01-00057-00, entitled "*Alen H. Santiago v. Pacbasin ShipManagement, Inc./Espan Salonga/Majestic Carriers, Inc.*"

#### **The Factual and Procedural Antecedents**

Petitioner Alen H. Santiago (*Santiago*) entered into a contract of employment<sup>[4]</sup> with respondent Pacbasin ShipManagement, Inc. (*Pacbasin*), the local manning agent of its foreign principal, Majestic Carriers, Inc. Under said contract, Santiago shall work as a "riding crew cleaner" with a monthly salary of US\$162.00 for two months.

On February 2, 2005, Santiago boarded the vessel M/T Grand Explorer. During his stint, he figured in an accident. On March 9, 2005, he was accidentally hit by two falling scaffolding pipes while performing a task, and his head, neck and shoulder were injured. He was rushed to Rashid Hospital in Dubai where he underwent a series of examination and treatment. Despite the treatment he received, his condition did not improve. He continued to have headaches with severe pain in his nape and shoulder. For this reason, it was advised that he be repatriated to the Philippines.

On March 17, 2005, two days after his repatriation, Santiago was referred to the company-designated doctor, Dr. Robert Lim (*Dr. Lim*) of the Marine Medical Services at the Metropolitan Medical Center, to undergo some tests. He underwent cervical spine and skull x-ray. His neck injury was diagnosed to be a contusion, nape area and left, C5, C6, C7 radiculopathy, mild sensorineural hearing loss, bilateral probably secondary to cochlear concussion. On April 8, 2005, he was referred to a neurologist and EMG/NCV was conducted. On August 13, 2005, after several sessions of treatment and evaluation from March 17, 2005 to July 2005, Dr. Lim, in coordination with the clinic's orthopedic surgeon and EENT specialists, pronounced that his hearing problem was cured and gave him a disability assessment of "Grade 12."

On October 10, 2005, Santiago underwent a CT scan of the head at his own

expense. On the 23rd of the same month, he was seen by Dr. Epifania Collantes (*Dr. Collantes*), a neurologist. He was diagnosed to have cerebral concussion, C5-C7 Radiculopathy secondary to trauma. In the clinical summary,<sup>[5]</sup> it was stated, among others, that his motor exam was 5/5 on all extremities and reflexes were normal; that there was no note of sensory deficits and the neck was supple; that cranial CT scan showed no skull fractures and no brain parenchymal lesions; that there was a showing of bilateral sclerosis of mastoids; and that he was ambulatory and able to perform his daily chores, although experiencing neck pains and headaches.

Despite medical treatment, his condition showed minimal improvement. He continued to experience a lingering pain in his nape, headaches and mixed type deafness. On February 16, 2006, he consulted Dr. Efren Vicaldo (*Dr. Vicaldo*) of the Philippine Heart Center, who was not a company-designated physician. After checking on his condition, Dr. Vicaldo issued a medical certificate<sup>[6]</sup> assessing his disability as Grade 7. He was also declared to be unfit to resume work as a seaman. His medical state would require regular medication and that it would take a considerable length of time before he would be considered symptom-free.

Subsequently, Santiago demanded payment from Pacbasin for disability benefits pursuant to the provisions of the POEA Standard Employment Contract. This demand, however, was not heeded. Consequently, he filed a complaint for disability benefit, illness allowance, and reimbursement of medical expenses, damages and attorney's fees.

In its defense, Pacbasin averred that during the time that Santiago was under medication, it shouldered all the expenses; that it even paid him a total of one hundred twenty (120) days of sickness allowance; that the findings of Dr. Vicaldo should not be given more weight than that of Dr. Lim; and that since Dr. Lim categorized his disability to be Grade 12, then the amount that he was entitled to receive was only \$5,225.00 and not the maximum amount of \$60,000.00.

In its decision dated December 29, 2006, the LA adopted the findings of Dr. Vicaldo that he was totally and permanently disabled, entitling him to full disability benefits. Thus, it disposed:

**WHEREFORE**, premises considered, judgment is hereby rendered ordering the respondents **PacBasin ShipManagement, Inc./Esteban Salonga/Majestic Carriers, Inc.** to pay complainant **Alen H. Santiago** the amount of **SIXTY SIX THOUSAND SEVEN HUNDRED TWELVE US DOLLARS & 80/100 (US\$66,712.80)** or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness wages and attorney's fees.

All other claims are **DISMISSED** for lack of merit.

**SO ORDERED.**<sup>[7]</sup>

Dissatisfied with the ruling of the LA, Pacbasin appealed the decision to the NLRC. On April 25, 2008, the NLRC partially granted its prayer. It ruled that Santiago was

only entitled to partial permanent disability equivalent to grade 12 or the amount of \$5,225.00 plus 10% as attorney's fees. Thus, the claim for total permanent disability benefit and sickness allowance was disallowed. The decretal portion reads:

WHEREFORE, premises considered, respondent's appeal is partially GRANTED. The Decision of the Labor Arbiter is **AFFIRMED** subject to MODIFICATIONS in that complainant is entitled only to partial permanent disability equivalent to grade 12 or the amount of US\$5,225.00 plus 10% thereof as attorney's fees. The award of total permanent disability benefit (US\$60,000.00) and sickness allowance (of US\$648.00) are vacated and set aside for lack of merit.

SO ORDERED.<sup>[8]</sup>

A motion for reconsideration was filed by Santiago but the same was denied.

Aggrieved, Santiago elevated the case to the CA. He insisted that he was entitled to the maximum disability benefit of \$60,000.00 because he was unable to perform his customary work for more than 120 days. His basis for said position was the ruling in the case of *Crystal Shipping v. Natividad*.<sup>[9]</sup>

Pacbasin countered that the case of *Crystal Shipping v. Natividad* was already abandoned and superseded by the case of *Jesus Vergara v. Hammonia Maritime Services*.<sup>[10]</sup> In said case, the Court ruled that a temporary total disability only becomes permanent when so declared by the company-designated physician within the period he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without the declaration of either fitness to work or the existence of a permanent disability.<sup>[11]</sup>

The CA, in its February 11, 2010 Decision, dismissed Santiago's appeal and affirmed the NLRC decision and resolution. The dispositive portion of said decision is quoted below as follows:

WHEREFORE, in view of the foregoing, the instant petition is hereby **DISMISSED**. Accordingly, the decision dated April 25, 2008 and resolution dated November 28, 2008 both issued by public respondent commission are perforce **affirmed in toto**.

SO ORDERED.<sup>[12]</sup>

The CA applied the case of *Vergara* where it was held that if the 120-day initial period was exceeded and no declaration was made with respect to disability or fitness because the seaman required further medical treatment, then treatment should continue up to a maximum of 240 days. At any time within the 240-day period, the seaman may be declared fit or disabled. If, however, the 240-day period lapsed without any declaration that the seaman was fit or disabled to work, the temporary total disability becomes a permanent total disability, which would entitle the seaman for maximum disability benefits.

The CA also wrote that since Santiago was assessed by the company- designated physician to be suffering a Grade 12 disability within the 240- day period, then he was merely suffering from a permanent partial disability and not a permanent total disability which would entitle him to a maximum disability benefit of \$60,000.00.

A motion for reconsideration was filed but the CA denied it in its resolution dated November 12, 2010.

Hence, this petition.

Santiago presents for evaluation the following errors allegedly committed by the CA, to wit:

**I.**

**THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN NOT APPLYING THE RULE OF PERMANENT TOTAL DISABILITY UNDER ARTICLE 291 OF THE LABOR CODE AND SEVERAL JURISPRUDENCE SUPPORTING THE SAME.**

**II.**

**THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN MISAPPLYING THE PROVISIONS OF THE POEA STANDARD EMPLOYMENT REGARDING THE OPTION OF THE PARTIES TO SECURE THE OPINION OF A THIRD DOCTOR.**

**III.**

**THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN NOT SUSTAINING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF PETITIONER.<sup>[13]</sup>**

The core issue in this case is the question of whether or not Santiago is entitled to a maximum disability benefit of US\$60,000.00 on account of his being unable to perform work as a seaman for more than 120 days.

The respondents, in their Comment,<sup>[14]</sup> state that both the NLRC and the CA were correct in ruling that Santiago was not permanently and totally disabled but was merely suffering from a Grade 12 disability under the POEA contract. They claim that the prevalent rule now, as enunciated in *Vergara*, is that the company-designated doctor overseeing the seafarer's treatment is given a maximum of 240 days to assess a seafarer with a disability or declare him fit to work. It is only after the lapse of 240 days when the company-designated doctor could not yet render a final assessment of the seafarer's medical condition that the latter shall be automatically considered permanently and totally disabled and, as such, entitled to the maximum disability benefit.

Santiago, in his Reply,<sup>[15]</sup> argues that the 120-day Presumptive Disability Rule is the

prevailing jurisprudence in this jurisdiction. According to him, this rule is not a novel one because as early as in the case of *GSIS v. Court of Appeals*,<sup>[16]</sup> the Court has ruled that if an employee is unable to perform his customary job for more than 120 days then said employee suffers permanent total disability regardless of whether or not he loses the use of any part of his body.

The Court finds no merit in the petition.

The contention of Santiago, that he was entitled to a permanent total disability benefit as he was unable to perform his job for more than 120 days, is not totally correct. This issue has been clarified in *Vergara* where it was ruled that the standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

In the recent case of *Magsaysay Maritime Corp. v. Lobusta*,<sup>[17]</sup> this Court also referred to, and applied, the ruling in *Vergara* in this manner:

Article 192(c)(1) under Title II, Book IV of the Labor Code, as amended, reads:

**ART. 192. *Permanent total disability.* – x x x**

x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

x x x x

Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, or the Amended Rules on Employees' Compensation Commission (ECC Rules), reads:

**Sec. 2. *Disability.* – x x x**

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

x x x x

Section 2, Rule X of the ECC Rules reads: