

FIRST DIVISION

[G.R. No. 181180, August 15, 2012]

**PHILASIA SHIPPING AGENCY CORPORATION AND/OR
INTERMODAL SHIPPING, INC., PETITIONER, VS. ANDRES G.
TOMACRUZ, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Challenged in this petition for review on *certiorari*^[1] are the June 15, 2007 Decision^[2] and January 14, 2009 Resolution^[3] or the Court of Appeals in CA-G.R. SP No. 94561, wherein they reversed the National Labor Relations Commission (NLRC) in NLRC CA No. 043129-05/NLRC OFW (M)03-11-2866-00.

Andres G. Tomacruz (Tomacruz) was a seafarer, whose services were engaged by PHILASIA Shipping Agency Corp., (PHILASIA) on behalf of Intermodal Shipping Inc. (petitioners) as Oiler #1 on board the vessel M/V Saligna.^[4] A twelve-month Philippine Overseas Employment Administration (POEA) Contract of Employment was duly signed by the parties on January 9, 2002.^[5]

This was preceded by four similar contracts, which Tomacruz was able to complete for the petitioners, aboard different vessels. For all five contracts, Tomacruz was required to undergo a pre-employment medical examination and obtain a "fit to work" rating before he could be deployed.^[6]

Having been issued a clean bill of health, Tomacruz boarded M/V Saligna on January 15, 2002 and performed his duties without any incident. However, sometime in September 2002, during the term of his last contract, Tomacruz noticed blood in his urine. Tomacruz immediately reported this to the Ship Captain, who referred him to a doctor in Japan. Tomacruz was subjected to several check-ups and ultrasounds, which revealed a "stone" in his right kidney. Despite such diagnosis, no medical certificate was issued; thus, he was allowed to continue working.^[7]

Eventually, Tomacruz was repatriated to the Philippines and sent to Micah Medical Clinic & Diagnostic Laboratory. The November 19, 2002 KUB Ultrasound report of the clinic revealed that he had stones in both his kidneys.^[8]

Referred by Micah Medical Clinic to Dr. Nicomedes Cruz, the company-designated physician, Tomacruz went through more tests, medications, and treatments. On July 25, 2003, Dr. Cruz declared Tomacruz fit to work despite a showing that there were stones about 0.4 cm in size found in both his kidneys, and there was the possibility of hematoma.^[9]

Intending to get his sixth contract, Tomacruz, armed with the declaration that he

was fit to work, proceeded to the office of the petitioners to seek employment. However, he was told by PHILASIA that because of the huge amount that was spent on his treatment, their insurance company did not like his services anymore.^[10]

Nagging in Tomacruz's mind was the veracity of his "fit to work" declaration. Thus, he sought the medical opinion of another physician, Dr. Efren R. Vicaldo, who, on September 9, 2003, stated the following findings in a Medical Certificate^[11]:

Nephrolithiasis, bilateral
S/P ESWL, right 1x
S/P ESWL, left 3x
Impediment Grade VII (41.80%)

Accompanying the Medical Certificate was a "Justification of Impediment Grade VII (41.8%) for Seaman Andres G. Tomacruz,"^[12] which provided:

- This patient/seaman is a known case of bilateral nephrolithiasis since 1999.
 - Sometime in 1999, he underwent right nephrolithotomy at St. Luke's Medical Center.
 - [I]n September, 2002 he had gross hematuria for which he was seen and evaluated in Japan. Renal ultrasound revealed small right kidney stone.
 - Apparently, he had recurrent bilateral renal stones for which he underwent ESWL once for his right kidney stone and ESWL three times for his left kidney stone.
 - Latest ultrasound however still revealed bilateral kidney stones; his latest creatinine is also slightly elevated.
 - He is now unfit to resume work as seaman in any capacity.
 - His illness is considered work aggravated.
 - He has to regularly monitor his renal function status to make sure he does not progress to renal failure.
 - Worsening of his symptoms may require repeat ESWL procedures.
 - Pain is a common accompanying symptom of nephrolithiasis and this patient is expected to have recurrent colicky pains.
 - Secondary infection is also common in patients with renal stones.
- This obviously impairs his quality of life.^[13]

Months later, or on November 3, 2003, Tomacruz filed a complaint for disability benefits, sickness wages, damages, and attorney's fees against the petitioners, before the Quezon City Arbitration Branch of the NLRC. This was docketed as OFW Case No. (M) 03-11-2866-00.^[14]

After the submission of the parties' respective pleadings, Labor Arbiter Virginia T. Luya-Azarraga dismissed the complaint in a Decision dated November 26, 2004.

Noting that Tomacruz was a seafarer, the Labor Arbiter explained that as such, he was a contractual employee, whose employment was governed by the contract that

he signed every time he was hired. Thus, the Labor

Arbiter held, once the seafarer's employment was terminated either by completion of contract or repatriation due to a medical reason or any other authorized cause under the POEA Standard Employment Contract (SEC), the employer was under no obligation to re-contract the seafarer.^[15]

Zeroing in on Tomacruz's medical condition, the Labor Arbiter observed how he was given extensive medical attention by the company- designated physician, and how he was given medication from the time he was repatriated until he was declared fit to work. As such, the Labor Arbiter said that the company-designated physician's assessment of Tomacruz's medical condition should be more accurate than that of the subsequent doctor's second medical opinion, which was not supported by sufficient evidence to warrant consideration.^[16]

Aggrieved, Tomacruz appealed this decision to the NLRC, on the grounds that the Labor Arbiter gravely erred in upholding the findings of the company-designated physician's declaration that he was fit to work over his doctor of choice, who was an internal medicine practitioner; thus, was better qualified in determining his health condition.^[17]

Not impressed, the NLRC agreed with the Labor Arbiter and declared that the opinion of the company-designated physician, as the one with the sole accreditation by law to determine the fitness or unfitness of a seafarer under POEA SEC, should prevail over the second opinion of Tomacruz's doctor of choice. The NLRC, citing "Vol. II, p. 664 of the book of Francisco on Evidence,"^[18] added:

When expert opinions differ, the care and accuracy with which the experts have determined the data upon which they based their conclusions are to be considered. Opinion testimony founded on facts within the knowledge and experience of the witness and supported by good reasons is likely to receive greater credence and carry more weight than a purely speculative theory or one which is rendered by person not qualified in the field about which they testify. Opinion of witnesses of accredited skill and experience who have formed their judgment from personal examination of the subject of controversy are generally more worthy of belief than those illicit by hypothetical questions which may or may not state all the fact necessary to a correct conclusion (20 American Jurisprudence 1056-1058)^[19]

On the above premise, the NLRC, on October 28, 2005, affirmed the Labor Arbiter's Decision. Tomacruz's Motion for Reconsideration^[20] was likewise dismissed by the NLRC on March 10, 2006 for lack of merit.^[21]

Via a Rule 65 petition for *certiorari*,^[22] Tomacruz elevated his case to the Court of Appeals based on the sole ground that:

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK [OR] IN EXCESS OF ITS JURISDICTION IN NOT GRANTING THE PETITIONER'S CLAIM FOR DISABILITY BENEFITS.^[23]

In his petition, docketed as CA-G.R. SP No. 94561, Tomacruz outlined the events and correspondences that he believed supported his case. He alleged that the declaration of the company-designated physician that he was fit to work was not worthy of belief as it was self-serving and biased. He also claimed that this was not in accordance with the result of the ultrasound conducted on him on July 24, 2003, the day before he was declared fit to work, which states:

I N T E R P R E T A T I O N

Follow-up to the previous study dated July 1, 2003 shows the following findings.

The right kidney measures 10.0 x 5.1 x 4.1 cm (LWH) with a cortical thickness of 1.5 cm, while the left kidney measures 11.8 x 5.2 x 6.4 cm (LWH) with a cortical thickness of 1.9 cm.

There is no significant interval change in the status of the previously noted lithiases in the right mid-pericalyceal area, measuring 0.4 cm, and the one in the left lower calyx, likewise measuring 0.4 cm.

A hypoechoic fluid focus is noted outlining the left perirenal area, with an approximate volume of 36cc.

The renal parenchyma demonstrates homogenous echopattern with no focal lesion seen. The central echo complexes are dense and compact with no ectasia or lithiasis seen.

IMPRESSION:

UNCHANGED FINDING OF RIGHT MID-PERICALYCEAL AND LEFT LOWER CACYCEAL LITHIASES SINCE THE PREVIOUS STUDY OF 07-01-03. MILD LEFT SIDED SUBSCAPSULAR FLUID COLLECTION, PROBABLY A HEMATOMA. FOLLOW-UP IS SUGGESTED.^[24]

Citing this Court's ruling in *Crystal Shipping, Inc. v. Natividad*,^[25] Tomacruz averred that since he was unable to perform his customary work as an oiler on board an ocean-going vessel for more than 120 days, he should be considered permanently disabled, and therefore entitled to disability benefits.^[26]

Entitlement of Tomacruz to the disability benefits was the issue the Court of Appeals focused on. In arriving at its decision, the Court of Appeals examined Section 20 B in relation to Section 32 of the 2000 POEA SEC on compensation and benefits for injury or illness of seafarers on board ocean-going vessels. The Court of Appeals also looked into the Labor Code's concept of permanent total disability and the

standards laid down by this Court in previous cases.

Not agreeing with the Labor Arbiter and the NLRC, the Court of Appeals, on June 16, 2007, granted the petition, on the premise that Tomacruz suffered from permanent total disability. The fallo of the Decision reads:

WHEREFORE, in light of the foregoing, the instant petition is **GRANTED**. Accordingly, the challenged resolutions of the public respondent National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Private respondents are held jointly and severally liable to pay petitioner: a) permanent total disability benefits of US\$60,000.00 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.^[27]

The petitioners moved for the reconsideration of this decision, which was however, denied by the Court of Appeals in a Resolution dated January 14, 2009, for lack of merit.

Espousing their cause, the petitioners are now before us, with the following assignment of errors:

A. THE COURT OF APPEALS SERIOUSLY ERRED IN GRANTING THE PETITION DESPITE THE APPARENT ABSENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION IN AFFIRMING THE DISMISSAL BY THE LABOR ARBITER OF RESPONDENT'S COMPLAINT FOR DISABILITY BENEFITS. THE RESOLUTIONS OF BOTH THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION BOTH REFLECT SOUND APPLICATION OF THE POEA STANDARD CONTRACT OF EMPLOYMENT TO FACTS OF THIS CASE AS BORNE OUT BY THE EVIDENCE ON RECORD.

1. THE COURT OF APPEALS SERIOUSLY ERRED IN AWARDING DISABILITY BENEFITS DESPITE THE UNDISPUTED FINDING OF FACT THAT COMPLAINANT IS ALREADY DECLARED FIT TO WORK.

2. THE COURT OF APPEALS SERIOUSLY ERRED IN APPLYING THE PROVISION OF ARTICLE 192 OF THE LABOR CODE (OR 120-DAY RULE) TO THE INSTANT CASE ON ENTITLEMENT OF A SEAFARER TO DISABILITY BENEFITS WHICH IS SPECIFICALLY GOVERNED BY PROVISIONS OF THE POEA STANDARD EMPLOYMENT CONTRACT. APPLYING ARTICLE 192 OF THE LABOR CODE IN A CLAIM FOR DISABILITY BENEFITS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT IS CLEARLY MISPLACED.

3. THE CRYSTAL SHIPPING DECISION OF THE HONORABLE SUPREME COURT IS NOT APPLICABLE IN THE INSTANT CASE AND THE SAID CASE CANNOT BE RESORTED TO AS BASIS FOR ANY