

## THIRD DIVISION

**[ G.R. No. 197205, September 26, 2012 ]**

**JESSIE V. DAVID, REPRESENTED BY HIS WIFE, MA. THERESA S. DAVID, AND CHILDREN, KATHERINE AND KRISTINA DAVID, PETITIONERS, VS. OSG SHIPMANAGEMENT MANILA, INC. AND/OR MICHAELMAR SHIPPING SERVICES, RESPONDENTS.**

### D E C I S I O N

**VELASCO JR., J.:**

Before Us is a Petition for Review on Certiorari under Rule 45 assailing and seeking to set aside the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> dated March 11, 2011 and June 1, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 114616, overturning the January 22, 2010 and March 30, 2010 Resolutions<sup>[3]</sup> of the National Labor Relations Commission (NLRC), Second Division in NLRC NCR OFW Case No. (M)09-10261-07.

The facts are not disputed. On May 10, 2006, petitioner Jessie David (David) entered into a six-month Contract of Employment<sup>[4]</sup> with respondent OSG Shipmanagement Manila, Inc. (OSG Manila), for and in behalf of its principal Michaelmar Shipping Services, Inc., as a Third Officer of the crude tanker M/T Raphael. The engagement was the third contract of employment between David and OSG Manila. OSG Manila previously hired and deployed David to work aboard crude tankers since December 2004.<sup>[5]</sup>

Prior to his embarkation, David underwent a pre-employment medical examination (PEME) and was declared "fit for further sea duty."<sup>[6]</sup> David then boarded the ship M/T Raphael on May 23, 2006.<sup>[7]</sup> Barely six months into his employment or in November 2006, David complained of an intolerable pain on his left foot so that he consulted a doctor at the port of Rotterdam. The doctor diagnosed him as suffering from "lipoma [on the] left upper leg"<sup>[8]</sup> and a possible "calcaneus spur of [the] left foot."<sup>[9]</sup> Although found to be fit for work, David was nonetheless advised to undergo further treatment upon repatriation to the Philippines.<sup>[10]</sup>

Immediately after his return to the country on December 4, 2006, OSG Manila referred David to the company-designated physician, Dr. Robert Lim (Dr. Lim) of the Metropolitan Medical Center (MMC), who referred him to the Cardinal Santos Medical Center for a Magnetic Resonance Imaging (MRI), which reflected the following impressions:

Large soft tissue mass of the anterior left thigh, as described.  
Considerations include neoplasm such as benign/malignant nerve sheath

tumor, hemangioma, soft tissue sarcoma or inflammatory process such as intramuscular abscess.<sup>[11]</sup>

The Pathology Report of the MMC also showed the following: "Left anterior thigh mass excision: Malignant fibrous histiocytoma, myxoid type. Margins of resection negative for tumor."<sup>[12]</sup>

On February 27, 2007, OSG Manila certified David's entitlement "to sickness allowance from the company or principal equivalent to basic salary of member."<sup>[13]</sup>

On March 2, 2007, Dr. Christopher Co Peña (Dr Peña), also of MMC, wrote Dr. Lim, informing the latter of the etiology of soft tissue sarcoma, viz:

The following are the etiology of soft tissue sarcoma:

1. Ionizing radiation
2. Genetic predisposition
3. Chemical exposure – Phenoxyacetic acid, chlorophenols, thorotrast, vinyl chloride, arsenic
4. Chronic lymphedema

Whether work-related or not will depend on the exposure of the above mentioned factors.<sup>[14]</sup>

On March 5, 2007, the Marine Medical Services of MMC certified that David had undergone medical and surgical evaluation treatment at its establishment from December 21, 2006 due to "malignant fibrous histiocytoma, left thigh calcaneal spur, left; s/p with excision of mass left thigh."<sup>[15]</sup>

Apparently as a result of another inquiry regarding David's illness and its relation to his work, Dr. Peña again addressed a letter to Dr. Lim stating:

Dear Dr. Lim,

This is with regards to Mr. Jessie David, diagnosed case of Malignant Fibrous Histiocytoma last February 2007. S/P Resection. Etiology has already been mentioned in my previous letter dated March 2, 2007. It is difficult to determine exactly whether his work history would have bearing as etiology is multifactorial. Unless there is documented exposure to the previously mentioned chemicals.<sup>[16]</sup>

Despite the non-conclusive findings of the company designated physician and Dr. Peña, **respondents issued on June 28, 2007 a Certification stating that David has been given a "permanent disability Grade One (1)"<sup>[17]</sup> by the Marine Medical Services, viz:**

## **C E R T I F I C A T I O N**

TO WHOM IT MAY CONCERN:

This is to certify that **MR. JESSIE V. DAVID**, a resident of Block 3 Lot 4, NWSA Compound Tondo, Manila, **has been given a permanent disability Grade of One (1) by Marine Medical Services.**

This certification is being issued 28th day of June 2007 for whatever legal purpose it may serve him best.

Very truly yours,

**OSG SHIPMANAGEMENT MANILA INC.**

As Agent Only, acting for and in behalf of the Owners

**(SGD.) MS. MA. CRISTINA G. PARAS**

President

Due to his condition, David underwent chemotherapy per the advice of the company-designated physician. However, despite several requests, respondents refused to shoulder David's expenses and medication. Hence, after an unsuccessful grievance proceeding, David filed on September 17, 2007 a complaint against respondents for total and permanent disability benefits, medical and transportation expenses, moral and exemplary damages, and attorney's fees.<sup>[18]</sup>

In his Decision of March 31, 2008 finding for David, Labor Arbiter (LA) Legerio V. Ancheta noted that there was no categorical denial on the part of respondents that David's disability was not work-related. Instead, respondent OSG Manila, through its President, issued a certification that David has a Grade I disability. According to LA Ancheta, this certification should bind the respondents.<sup>[19]</sup> Hence, LA Ancheta declared David to be permanently and totally disabled, entitled to be paid his total disability compensation, plus damages and attorney's fees in the total amount of USD 115,500 and PhP 426,645.69.<sup>[20]</sup>

The NLRC affirmed the Decision of the LA *in toto* holding that the respondents, by certifying David's Grade I disability and by paying his sickness allowance, are estopped from impugning the work-related nature of David's illness.<sup>[21]</sup>

Undaunted, respondents elevated the case to the CA. In its Decision dated March 11, 2011, the appellate court ruled against David's entitlement to the benefits he claimed, and accordingly nullified the resolutions of the NLRC.<sup>[22]</sup> The CA ratiocinated, thus:

In the case at bar, there is no question that private respondent (David) reported to the company-designated physician for treatment immediately upon arriving in the Philippines. Problems arose, however, when private respondent was diagnosed to be suffering from malignant fibrous histiocytoma and **while his condition was given a grade I disability rating**, Dr. Christopher Co Pe[ñ]a who diagnosed private respondent's

condition opined that it is difficult to determine whether work history would have a bearing to his illness as etiology is multifactorial. Dr. Pe[ñ]a was short of declaring private respondent's illness as non-work related. It is noted, however, that **aside from the certification by the president of petitioner OSG stating that the Marine Medical Services**, the record is bereft of the actual medical certificate coming from the Marine Medical Services itself which shows that indeed it issued a Grade I disability rating for private respondent's illness.

x x x x

Malignant Fibrous Histiocytoma is not listed as an occupational disease under Section 32-A thereof. Nonetheless, Section 20(B), paragraph (4) provides that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." The burden is, therefore, placed upon private respondent to present substantial evidence x x x. Private respondent, however, failed to do this. Private respondent did not, by way of a contrary medical finding, assail the diagnosis arrived at by the company-designated physician x x x.

x x x x

As to the issue that there was an admission on the part of petitioner OSG that private respondent was already assessed to have a grade I disability, the same only shows that indeed private respondent is suffering from a disability. But going back to the provisions of the POEA Standard Employment Contract, such disability must have a causal relation to the work of private respondent to be compensable.<sup>[23]</sup>

In due time, David filed a Motion for Reconsideration of the CA's March 11, 2011 Decision.<sup>[24]</sup> Pending the resolution of his motion, David succumbed and died on April 9, 2011<sup>[25]</sup> and was substituted in the case by his wife and children.<sup>[26]</sup> On June 14, 2011, the CA issued a resolution denying the motion for reconsideration.

Hence, this petition.<sup>[27]</sup>

Petitioners argue that the appellate court grievously erred in overturning the NLRC and the LA's decisions considering that it is presumed that David's illness was work-related and it behooves the respondents to present substantial evidence to overcome this presumption. To petitioners, respondents have failed to discharge this burden. On the contrary, respondents admitted that David was suffering from a Grade I disability. Petitioners further add that there is a reasonable causal connection between David's illness and the duties he performed as a Third Officer on board respondents' crude tanker.

In their comment, respondents counter that the appellate court's denial action was correct since "convenient presumption regarding work-relation will not suffice to justify an award of disability benefits"<sup>[28]</sup> and David failed to submit any real and substantial evidence "to dispute the opinion of the company physician confirming [the] absence of work-relation."<sup>[29]</sup> Respondents posit that if David was indeed

convinced that his illness was work-related, he should have procured supporting opinion from his various doctors.<sup>[30]</sup>

The petition has merit.

Deemed read and incorporated into the Contract of Employment between David and respondents are the provisions of the 2000 Philippine Overseas Employment Agency Standard Employment Contract (POEA-SEC). Section 20(B) of the POEA-SEC reads:

SECTION 20. COMPENSATION AND BENEFITS. ---

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESSES

The liabilities of the employer **when the seafarer suffers work-related injury or illness** during the term of his contract are as follows:

1. x x x x

2. x x x x

3. Upon sign-off from the vessel for medical treatment, **the seafarer is entitled to sickness allowance** equivalent to his basic wage until he is declared fit to work, or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

x x x x

4. **Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.**<sup>[31]</sup> (Emphasis supplied.)

In this case, David suffered from malignant fibrous histiocytoma (MFH) in his left thigh. MFH is not one of the diseases enumerated under Sec. 32 of the POEA-SEC. However, Sec. 20(B)(4) of the POEA-SEC clearly established a disputable presumption in favor of the compensability of an illness suffered by a seafarer during the term of his contract. This disputable presumption works in favor of the employee pursuant to the mandate under Executive Order No. (EO) 247 dated July 21, 1987 under which the POEA-SEC was created: "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith"<sup>[32]</sup> and "to promote and protect the well-being of Filipino workers overseas."<sup>[33]</sup> Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.<sup>[34]</sup>

In this case, David not only relies on this disputable presumption of the compensability of his illness but further alleges that the following conditions provided in Sec. 32-A of the POEA-SEC have all been satisfied: