

SECOND DIVISION

[G.R. No. 177100, February 22, 2010]

BANDILA SHIPPING, INC., MR. REGINALDO A. OBEN, BANDILA SHIPPING, INC. AND FUYOH SHIPPING, INC., PETITIONERS, VS. MARCOS C. ABALOS, RESPONDENT.

DECISION

ABAD, J.:

Statement of the Case

This case is about a Filipino seafarer's claim for disability benefits from *cholecystolithiasis* or gallstone that was discovered when he suffered excruciating pain while working on board an ocean-going vessel, an illness that was not in the list of compensable diseases listed in the standard seafarer's contract that he signed with the vessel owner.

The Facts and the Case

On July 25, 2002 respondent Marcos C. Abalos entered into a contract of employment with petitioner Bandila Shipping, Inc. (BSI), a Philippine manning agency acting on behalf of its co-petitioner Fuyoh Shipping, Inc., as fourth engineer for the ocean-going vessel M/V Estrella Eterna at US\$765.00 per month for 10 months.^[1] Prior to embarkation, Abalos underwent pre-employment medical examination and was found to be "*fit for sea service*."^[2] He boarded his vessel in Singapore on August 28, 2002.^[3]

As the vessel headed towards Nagoya, Japan, on January 23, 2003, respondent Abalos felt excruciating pain in his stomach while he was on duty. He tried to tolerate it until he got off but he was unable to sleep because of severe pain. The following day, unable to bear the pain, he told the vessel's master about it. After being examined at the International Clinic in Nagoya, Japan, he was diagnosed to be suffering from "gallstone, acute cholecystitis, and pancreatitis suspected." The attending physician found him unfit for duty and recommended his repatriation.^[4]

On January 25, 2003 respondent Abalos was repatriated to the Philippines. He was referred to Dr. Ruby Dizon who found that he had *cholecystolithiasis*, commonly known as gallstone, and needed to undergo *cholecystectomy* or gall bladder removal that would cost P80,000.00.^[5] Unable to get the company's approval for his surgery,^[6] Abalos sought the opinion of other physicians who made the same diagnosis and suggested surgery.^[7]

On June 12, 2003 Abalos filed a complaint with the Labor Arbiter for disability benefits, unexpired portion of his contract, moral and exemplary damages, and

attorney's fees against petitioner BSI, its claims manager, and its foreign principal, petitioner Fuyoh Shipping, Inc.,^[8] in NLRC OFW-(M) Case 03-06-1493-00. Persuaded by the opinion of a company-designated physician that *cholecystolithiasis* was not work-related, BSI denied liability.

Meantime, respondent Abalos amended his complaint to include nonpayment of disability benefits, medical reimbursement, sickness allowance, compensatory damages, moral and exemplary damages, and attorney's fees.^[9]

To establish compensability, respondent Abalos consulted Dr. Efren R. Vicaldo, an internist of the Philippine Heart Center, who certified that: 1) Abalos had gall bladder stones requiring surgery; 2) he was unfit to resume work as seaman; and 3) his illness was work-aggravated with an impediment of grade VII (41.80%).^[10]

Efforts to amicably settle the dispute did not materialize.^[11] Thus, on January 29, 2004 the Labor Arbiter rendered a decision,^[12] granting respondent Abalos permanent disability benefit, sickness allowance, and 10 percent of the award as attorney's fees. The Labor Arbiter found that Abalos became ill while on board his assigned vessel and the demanding nature of his work aggravated it, thus, establishing a reasonable connection between the two. He denied the other claims for lack of merit.

But, on appeal by petitioner BSI, on February 23, 2006 the National Labor Relations Commission (NLRC) rendered judgment^[13] that set aside the Labor Arbiter's decision. The NLRC pointed out that the applicable standard terms of employment did not regard respondent Abalos' illness as an occupational disease. He also failed to show that his work on ship aggravated it. His motion for reconsideration having been denied,^[14] Abalos went up to the Court of Appeals (CA) in CA-G.R. SP 95238.

On January 30, 2007 the CA rendered a decision,^[15] granting the petition, setting aside the NLRC decision, and reinstating that of the Labor Arbiter. On March 19, 2007 the appellate court denied BSI's motion for reconsideration,^[16] hence, the present petition for review.

Issue Presented

The core issue presented in this case is whether or not Abalos' *cholecystolithiasis* or gallstone is compensable and, thus, entitles him to disability benefits and sickness allowance.

The Court's Rulings

Whether or not respondent Abalos' illness is compensable is essentially a factual issue. Yet the Court can and will be justified in looking into it considering the conflicting views of the NLRC and the CA.^[17]

There is no question as to what respondent Abalos was sick of. He was sick of *cholecystolithiasis* or gallstone. It does not develop overnight. It is caused by stone formation in the gallbladder that blocks the tube leading out of the gallbladder, causing bile to build up, resulting in gallbladder inflammation. These gallstones are