

SECOND DIVISION

[G.R. No. 161934, October 06, 2010]

VARORIENT SHIPPING CO., INC., AND, D ARIA MARITIME CO., LTD., PETITIONERS, VS. GIL A. FLORES, RESPONDENT.

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* seeking to set aside the Decision^[1] dated February 28, 2003, of the Court of Appeals (CA) in CA-G.R. SP. No. 55512, entitled *Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd. v. National Labor Relations Commission, Third Division and Gil A. Flores*, which affirmed with modification the Decision^[2] dated May 25, 1999, and Resolution^[3] dated August 18, 1999, of the National Labor Relations Commission (NLRC) in NLRC CN OCW RAB-IV-9-917-97-C, and its Resolution^[4] dated January 29, 2004, denying petitioners' motion for reconsideration thereof. The assailed CA Decision ordered petitioners Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd., jointly and severally, to pay respondent Gil A. Flores the balance of sickness wages in the amount of US\$3,790.00, or its peso equivalent at the time of actual payment, and to reimburse his medical and surgical expenses in the total amount of P15,373.26, instead of P13,579.76. However, it dismissed all the other claims of respondent for lack of merit.

The antecedent facts are as follows:

On April 7, 1997, petitioners employed respondent, in behalf of its foreign principal, Aria Maritime Co., Ltd. of Piraeus, Greece, for the position of Chief Officer on board *M/V Aria*, per Contract of Employment^[5] dated April 7, 1997, duly approved by the Philippine Overseas Employment Administration (POEA), for a period of 12 months, with a basic monthly salary of US\$1,200.00 at 48 hours of work weekly, overtime pay of US\$600.00, allowance of US\$200.00, and vacation leave with pay of 30 days a year (or US\$100.00 a month) or pro-rata. The total fixed monthly salary of respondent was US\$2,100.00.

On April 16, 1997, he was deployed aboard *M/V Aria* in Bangkok, Thailand. During his employment, the master of the vessel sent respondent to the Centre Medical de Ngodi at Doula, Cameroon, where he was treated for three days due to the shooting pain in the lower extremities, particularly on his right foot. In the Medical Certificate^[6] dated June 19, 1997, the attending physician, Dr. R. Mongouè Tchouaká», stated that he diagnosed respondent's pain on the right foot as "sciatic neuralgia" and administered "[drips], injection, and acupuncture." Respondent was declared not fit to work. The doctor recommended respondent's repatriation to the Philippines for continuing treatment.

On June 21, 1997, respondent was repatriated to the Philippines. When he reported back to work, he was referred to the company physician, Dr. John H.E. Cusi who, in turn, referred him to Dr. Irene B. Roman-Igual, a neurologist at Makati Medical Center. On June 30, 1997, respondent was subjected to the Computed Tomography Scan (CT Scan), which yielded the following results:

CT scan examination of the lumbosacral spine demonstrates a large disc herniation ventral and right lateral at the L5-S1 level encroaching into the right neural exit foramina. There is compression of the right nerve root at the same L5-S1 level.

Smaller disc protrusion is also noted ventral and bilateral at the L4-L5 interspace level obliterating the underlying epidural fatty plane.

The right nerve root appears relatively swollen when compared with the left at the L5-S1.

The *ligamentum flavum*, however, is not hypertrophic.

The vertebral bodies, pedicles, laminae, facets and sacro-iliac joints are intact.

There is straightening of the lumbar curvature, but with no compression deformities nor spondylolisthesis.

IMPRESSION: Large disc herniation, ventral and right lateral at the L5-S1 level with secondary right nerve root compression and edema. Small disc protrusion also noted ventral and bilateral at the L4-L5.^[7]

Dr. Igual observed that the "CT scan showed large disc herniation L5-S1 with 2° nerve root compression and edema" and recommended respondent's "confinement for at least two weeks for P.T. [physical therapy] and medications; if not resolved, may need surgical decompression."^[8]

In a letter^[9] to petitioner Varorient dated July 29, 1997, respondent, through his counsel, stated that due to the gross and evident bad faith of petitioners in refusing to grant him continued medical assistance until he becomes fit to work, as recommended by their company doctors, he was forced to seek medical treatment at his own expense.^[10] Respondent demanded that petitioners should provide him medical treatment and pay him sickness wages and disability compensation, within five (5) days from receipt of the letter; otherwise, he would be constrained to institute appropriate legal action against them.

In a Certification^[11] dated November 7, 1997, Dr. Copernico J. Villaruel, Jr., attending orthopedic surgeon at the Philippine General Hospital, stated that respondent has been admitted under his care from October 9 to 10, 1997 for hemilaminectomy and foraminotomy of L4-L5 and L5-SI, due to the pain in his right foot, and that respondent is now fit to go back to work.

Acting on the endorsement letter^[12] dated November 24, 1997 by Labor Arbiter Pedro C. Ramos, Dr. Francisco A. Estacio, Chief of the Medical and Rehabilitation Division of the Employees Compensation Commission (ECC), submitted the Disability Evaluation Report^[13] dated December 15, 1997, conducted on the health condition of respondent, with the following findings:

PHYSICAL EXAMINATION:

- Fairly developed fairly nourished
- Head, Eyes, Ears, Nose, and Throat no abnormal findings
- Heart and lungs - no rales and no murmur appreciated
- Abdomen - no abnormal finding
- Extremities - no limitation of movements, no atrophy of muscles.

DIAGNOSIS:

- Large Herniated Disc L5 S1, with Nerve Root Compression and Edema
- Small Disc Protrusion, L4 L5

RECOMMENDATION:

Based on ECC Schedule of Compensation, the Complainant deserves to receive daily income benefit for the loss of income he incurred from June 1997 to November 1997, plus reimbursement of hospital and medical expenses for his injury, Herniated Disc.

On September 19, 1997, respondent filed a Complaint^[14] against petitioners, alleging that (1) per his employment contract, he boarded *M/V Aria* at Bangkok, Thailand on April 16, 1997; (2) prior to his deployment, he was employed by petitioner for the past 12 years; (3) during his employment and while in the performance of his duties, he suffered injuries consisting of "large disc herniation, ventral and right lateral at the L5-S1 level with secondary right and nerve root compression and edema, small disc protrusion also noted at ventral and bilateral at the L4-L5"; (4) due to petitioners' refusal to provide for his medical treatment and continued failure to pay his sickness wages amounting to US\$4,800.00, he was constrained to provide for his own medical expenses; (5) his injuries constituted permanent and total disability which, under POEA Memorandum Circular No. 5, series of 1994, would make petitioners liable for disability benefits under his employment contract in the amount of US\$60,000.00; and (6) his injury or disability was directly and proximately due to the direct and vicarious acts of negligence of petitioners and their agents. Respondent prayed that judgment be rendered, declaring petitioners liable to reimburse his medical and hospital expenses in the total amount of P103,969.00 and to pay him disability benefits in the amount of US\$60,000.00, sickness wages of US\$4,800.00, compensatory damages of US\$604,800.00 (this amount was reduced to US\$13,370.00 in his Position Paper), moral damages of P1,100,000.00, and exemplary damages and attorney's fees in such an amount as the labor arbiter may deem proper.

In his Position Paper,^[15] respondent sought reimbursement of his medical expenses

and asserted that petitioners are liable to pay him sickness wages, compensatory damages, moral damages, and attorney's fees. However, respondent withdrew his claim for disability benefits with reservation to re-file a complaint should there be a recurrence of his injury.

In their Position Paper,^[16] petitioners countered that respondent is not entitled to the benefits arising from his alleged permanent and total disability as he was later declared to be fit to work per Certification dated November 7, 1997 by Dr. Copernico J. Villaruel, Jr., the attending orthopedic surgeon at the Philippine General Hospital; that respondent can no longer seek continuation of his medical treatment and claim for sickness wages and reimbursement of medical expenses because upon his repatriation, he had received the amount of US\$1,010.00 (or the equivalent then of about P40,400.00) as settlement for his sickness wages and other benefits, as evidenced by the Receipt and Quitclaim^[17] dated June 25, 1997, executed by respondent; and that respondent is not entitled to moral and exemplary damages and attorney's fees. By way of counterclaim, they sought recovery of litigation expenses, actual damages, and attorney's fees in an amount not less than P20,000.00 and, also, exemplary damages in an amount at the discretion of the labor arbiter.

In their Supplement to Position Paper,^[18] petitioners averred that respondent sought another employment with Tara Trading Shipmanagement, Inc. (for and in behalf of Amethyst Shipping Co.), on board *M/V Luna Azul*, for a period of twelve (12) months, with a basic monthly salary of US\$967.00 at 48 hours of work weekly, overtime pay of US\$535.00/month (US\$6.24 per hour beyond 105 hours), and vacation leave with pay of 3 days a year (or US\$98.00 a month), as evidenced by his Contract of Employment,^[19] Seafarer Info-Sheet^[20] and POEA Overseas Employment Certificate.^[21]

On September 7, 1998, Acting Executive Labor Arbiter Pedro C. Ramos dismissed respondent's complaint for permanent and total disability benefits, sickness wages and all other claims and, likewise, petitioners' counterclaim for damages, for lack of merit. The labor arbiter found that petitioners have substantially complied with all their obligations to respondent under the POEA-approved employment contract. He debunked respondent's claim for permanent and total disability benefits because respondent had been duly proven and declared to be "fit to work" not only by the hospital of his choice, *i.e.*, Philippine General Hospital, but also by the Employees Compensation Commission (ECC); that respondent withdrew his claim during the pendency of the proceedings, although with reservation to re-file the same; and that respondent is now on board *M/V Luna Azul* on an overseas deployment. He upheld the validity of the Receipt and Quitclaim executed by respondent and stated that respondent had received reimbursement of his medical expenses in the amount P4,896.50. He declared that respondent is no longer entitled to sickness wages as it would amount to double recovery of benefits, as provided for under Paragraph 11, Section 4 of the POEA Standard Employment Contract.

On May 25, 1999, the NLRC rendered a Decision which reversed and set aside the Decision of the labor arbiter. It ruled that respondent is entitled to sickness wages and to free medical and hospital treatment for the injury he sustained during the term of his contract, pursuant to Section C 4(b) and (c), Part II of the Standard

Employment Contract Governing All Filipino Seamen On Board Ocean-Going Vessels, which obligates the employer to: (1) provide continuous medical treatment to the repatriated injured seaman until such time he is declared fit or the degree of his disability has been established by the company-designated physician; and (2) pay the injured seaman one hundred percent (100%) of his basic wages from the time he leaves the vessel for treatment until he is declared fit to work, but in no case shall this period exceed 120 days. The NLRC observed that petitioners cannot be considered to have adequately discharged their obligation in providing continuous treatment for respondent, as they failed to follow through their company-designated physician's recommendation, which required respondent to undergo a two-week confinement and physical therapy and, if the injury remains unresolved, for respondent to have surgical decompression. As a consequence, respondent was constrained to seek treatment and surgery from a doctor other than the company-designated physician. The NLRC also declared that respondent is entitled to sickness wages equivalent to 120 days in the amount of US\$4,800.00, less the amount of US\$1,010.00 which he had received, as full settlement of the claim from the petitioners, per Receipt and Quitclaim dated June 25, 1997, or a net total of US\$3,790.00. However, the NLRC denied respondent's claim for compensatory damages, as the contractual benefit of sickness wages provided for under the Standard Contract is already a compensatory measure intended to assist the injured seaman during the term of his contract. The dispositive portion of the Decision reads:

WHEREFORE, the decision appealed from is hereby SET ASIDE. Respondents Varorient Shipping Co., Inc. and Aria Maritime Co., Ltd., are, jointly and severally, ordered to pay complainant Gil A. Flores the Philippine Peso equivalent at the time of actual payment of THREE THOUSAND SEVEN HUNDRED NINETY US DOLLARS (US\$3,790.00), plus THIRTEEN THOUSAND FIVE HUNDRED SEVENTY-NINE and 76/00 PESOS (P13,579.76), representing the balance of the sickness wages and reimbursement of medical and surgical expenses.

All other claims are DISMISSED for lack of merit.

SO ORDERED.^[22]

Both parties filed their respective motions for reconsideration. Petitioners sought exoneration from liability, while respondent averred that the NLRC erred in excluding certain items or receipts from the reimbursable medical expenses, deducting US\$1,010.00 from the award of sickness wages, not holding petitioners liable for his entire wages up to the time he would be employed with another company, and not awarding him compensatory and moral damages and attorney's fees.

The NLRC denied respondent's motion for reconsideration in a Resolution dated June 30, 1999 and, likewise, petitioners' motion for reconsideration in its Resolution dated August 18, 1999.

On petition for review by petitioners, the CA affirmed the Decision dated May 25, 1999 and the Resolution dated August 18, 1999 of the NLRC with the following