622 Phil. 761

# FIRST DIVISION

# [ G.R. No. 182430, December 04, 2009 ]

## LEOPOLDO ABANTE, PETITIONER, VS. KJGS FLEET MANAGEMENT MANILA AND/OR GUY DOMINGO A. MACAPAYAG, KRISTIAN GERHARD JEBSENS SKIPSRENDERI A/S, RESPONDENTS.

## D E C I S I O N

**CARPIO MORALES, J.:**

On January 4, 2000, Leopoldo Abante (petitioner) was hired by respondent KJGS Fleet Management Manila (KJGS) to work as ablebodied seaman aboard *M/T Rathboyne*, for a period of nine months and with a basic salary of US$535.00 per month.

Sometime in June, 2000, while carrying equipment on board the vessel, petitioner slipped and hurt his back. Upon the vessel's arrival in Kaohsiung, Taiwan on July 4, 2000, petitioner was brought to a hospital whereupon he was diagnosed to be suffering from "lower back pain r/o old fracture lesion 4th lumbar body." Nevertheless, he was still declared to be fit for restricted work and was advised to see another doctor in the next port of call. Unable to bear the pain, petitioner was, on his request, repatriated to the Philippines on July 19, 2000.

On July 21, 2000, petitioner reported to KJGS and was referred to a company-designated physician, Dr. Roberto D. Lim (Dr. Lim), at the Metropolitan Hospital. After a series of tests, he was diagnosed to be suffering from "Foraminal stenosis L3-L14 and central disc protrusion L4-L5" on account of which he underwent Laminectomy and Discectomy on August 18, 2000, the cost of which was borne by KJGS. He was discharged from the hospital 10 days later, but was advised to continue physical therapy. He was seen by Dr. Lim around 10 times from the time he was discharged until February 20, 2001 when he was pronounced fit to resume sea duties. He, however, refused to sign his Certificate of Fitness for Work.[1]

Petitioner later sought the opinion of another doctor, Dr. Jocelyn Myra R. Caja, who diagnosed him to have "failed back syndrome" and gave a grade 6 disability rating[2] --- which rating rendered him medically unfit to work again as a seaman and called for the award of US$25,000.00 disability benefits --- drawing him to file on April 27, 2001 a Complaint[3] before the National Labor Relations Commission (NLRC), docketed as NLRC OFW Case No. 01-04-0736-00, for disability compensation in the amount of US$25,000.00, moral and exemplary damages and attorney's fees.

By Decision[4] of July 24, 2003, Labor Arbiter Jovencio Ll. Mayor, Jr. dismissed the complaint, holding that under Philippine Overseas Employment Administration (POEA) Memo Circular No. 9, series of 2000, in the event of conflict between the

assessment of the company-designated physician and the doctor chosen by the seafarer, the opinion of a third doctor agreed on by both the employer and the seafarer should be sought. Hence, the Labor Arbiter held that petitioner's immediate filing of the complaint, insisting on his own physician's assessment, was premature and, therefore, the assessment of the company-designated physician that he is still fit to work prevails.

On petitioner's appeal, the NLRC, by Decision[5] of January 31, 2005, ordered the remand of the case to the Labor Arbiter for further proceedings. It held that since there were two conflicting diagnoses as to petitioner's fitness to work, the matter must be referred to a third doctor to determine his entitlement to disability benefits under the new POEA Standard Employment Contract for seafarers. KJGS's Motion for Reconsideration of said Decision was denied by Resolution[6] of November 3, 2006, hence, it appealed to the Court of Appeals.

By Decision[7] of December 10, 2007, the appellate court *reversed* and set aside the NLRC ruling and *reinstated* the Labor Arbiter's Decision. It held that Sec. 20 (B) of POEA Memo Circular No. 9, series of 2000, which requires a third doctor in case of conflicting assessments, is inapplicable.

Noting that the employment contract between KJGS and petitioner was executed on January 4, 2000, the appellate court held that the contract is governed by Memo Circular No. 55, series of 1996, which did not have a similar provision, hence, it is the determination or assessment of the company-designated physician which is deemed controlling. Petitioner's motion for reconsideration having been denied by Resolution[8] of April 1, 2008, he interposed the present petition, insisting that he is entitled to Grade 6 disability benefits under the new POEA Standard Employment Contract.

The petition is meritorious.

Section 20 (B) (3) of the POEA Standard Employment Contract of 2000 provides:

> **SECTION 20. COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS**
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> 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.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated

> to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> **If a doctor appointed by the seafarer disagrees with the assessment,** a **third doctor** may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (emphasis supplied)

Clearly, the above provision does not preclude the seafarer from getting a second opinion as to his condition for purposes of claiming disability benefits, for as held in *NYK-Fil Ship Management v. Talavera:*:[9]

> This provision substantially incorporates the 1996 POEA Standard Employment Contract. Passing on the 1996 POEA Standard Employment Contract, this Court held that **"[w]hile it is the company-designated physician who must declare that the seaman suffers a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion," hence, the Contract "recognizes the prerogative of the seafarer to request a second opinion and, for this purpose, to consult a physician of his choice**." (emphasis and underscoring supplied)

In the present case, it is undisputed that petitioner immediately consulted with a physician of his choice after initially having been seen and operated on by a company-designated physician. It was after he got a second opinion and a finding that he is unfit for further work as a seaman that he filed the claim for disability benefits.

Respecting the appellate court's ruling that it is POEA Memo Circular No. 55, series of 1996 which is applicable and not Memo Circular No. 9, series of 2000, *apropos* is the ruling in *Seagull Maritime Corporation v. Dee*[10] involving employment contract entered into in 1999, before the promulgation of POEA Memo Circular No. 9, series of 2000 or the use of the new POEA Standard Employment Contract, like that involved in the present case. In said case, the Court applied the 2000 Circular in holding that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion which can then be used by the labor tribunals in awarding disability claims.

> Courts are called upon to be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.
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> **Accordingly, if serious doubt exists on the company-designated**