

THIRD DIVISION

[G.R. NO. 161104, September 27, 2006]

**NYK-FIL SHIP MANAGEMENT INC. AND/OR NYK SHIP
MANAGEMENT HK., LTD., PETITIONERS, VS. THE NATIONAL
LABOR RELATIONS COMMISSION AND LAURO A. HERNANDEZ,
RESPONDENT.**

DECISION

CARPIO MORALES, J.:

By a contract^[1] forged on January 21, 1999, petitioner NYK Ship Management (HK) Ltd., through its local manning agent-co-petitioner NYK-Fil Ship Management, Inc., hired Lauro A. Hernandez (respondent) as a boatswain on board the vessel S.S. LNG FLORA for a period of eight months.

Before the contract was executed, respondent was made to undergo the routine Pre-employment Medical Examination

(PEME) and was found to be fit to work by the attending physician, Dr. Clarissa M. Mendoza.^[2] On the query contained in the medical history portion as to whether he was suffering from or had been told that he had any disease or ailment, including "rheumatism, joint or back trouble,"^[3] respondent answered in the negative.

On January 28, 1999, respondent boarded the above-named vessel and commenced to perform his duty as boatswain.

Twenty-five days later or on February 22, 1999, while the vessel was approaching Davao City, respondent requested for medical attention due to high fever and pains at his left hip bone socket.^[4] He was immediately brought to the Davao Doctors Hospital and before the attending physician, Dr. C. Serrano, he disclosed that he had been experiencing "fever since January 17, 1999, moderate to high grade, intermittent, associated with chills, body malaise and pain on lumbosacral area radiating to left lower extremity."^[5] The initial impression of his condition was that he was suffering from left gluteal abcess and septic arthritis left hip.^[6]

Despite the administration of, among other things, antibiotics for five days, respondent's fever persisted along with the pain in his left lower extremity. The vessel thus left him behind.

Respondent was thereafter transferred to Manila and was referred to petitioners' company-designated physicians at the Metropolitan Medical Hospital (MMH). He was initially examined and admitted on March 2, 1999 and was referred to an orthopedic surgeon whose request for an x-ray of his lumbosacral spine and hip showed negative results.^[7] He was likewise referred to a neurologist who performed EMG-

NCV which showed left L4-L5 and S1 radiculopathy.^[8]

Respondent also underwent MRI or magnetic resonance imaging of the thoracic and lumbosacral spine which showed negative results. Respondent was then prescribed medications, started on physical therapy, and was discharged on March 26, 1999.^[9]

On April 8, 1999, respondent was admitted back to the hospital due to left hip pain especially on his left lower extremity. His latest x-ray showed no deterioration of his hip joint condition, however.

By May 1999, respondent's condition was finally determined to be **septic arthritis and/or avascular necrosis** of the left hip.^[10] His rehabilitation program with skin traction continued and he started taking antibiotics.^[11]

On June 16, 1999, respondent's condition was re-evaluated and no significant improvement was noted. He was referred back to the orthopedic surgeon who opined that respondent needed surgery - left hip debridement and possible total hip replacement - which was estimated to cost between P160,000 to P180,000.^[12]

By early November 1999, respondent's proposed surgery was approved but despite being notified of the approval, he failed to report for scheduling thereof.^[13]

On November 16, 1999, respondent instituted a complaint against petitioners, praying for, among others, disability compensation benefits equivalent to Grade 1 or total permanent disability amounting to \$60,000.^[14] The case was docketed as NLRC OFW (M) Case No. 99-11-1946-00.

In the meantime or on February 3, 2000, respondent underwent surgical operation for a total hip replacement at the MMH. Thereafter, he continued to report to his orthopedic surgeon and was advised to continue his home exercises.^[15]

In a letter dated April 28, 2000, respondent's orthopedic surgeon, Dr. Tiong Sam N. Lim, wrote the medical coordinator of the MMH regarding respondent's case, recommending that respondent's disability grading be half of grade 9 or complete inability of a hip joint in full extension of the thigh, *viz*:

THIS IS WITH REGARDS TO YOUR QUERY REGARDING THE CASE OF MR. LAURO HERNANDEZ DIAGNOSED TO HAVE AVASCULAR NECROSIS WITH SEPTIC ARTHRITIS, LEFT HIP; S/P TOTAL HIP REPLACEMENT, LEFT ON FEBRUARY 03, 2000.

HE IS NOW TEN WEEKS POST-HIP REPLACEMENT AND IS RECOVERING WELL FROM HIS SURGERY.

IT IS MY OPINION THAT HE WILL EVENTUALLY RECOVER TO THE POINT THAT HE WILL BE SYMPTOMS FREE AS FAR AS PAIN IN THE HIP IS CONCERNED AND HE WILL BE ABLE TO BECOME INDEPENDENT IN ACTIVITIES OF DAILY LIVING.

HOWEVER, IT WOULD BE DOUBTFUL AND WOULD NOT BE ADVISABLE

FOR HIM TO RESUME HIS WORK AS A SEAFARER WITH A MECHANICAL HIP JOINT IN PLACE AND CONSIDERING THE AMOUNT OF HEAVY WORK ABOARD A SEA VESSEL.

HIS SUGGESTED DISABILITY GRADING WOULD BE HALF OF GRADE NINE (COMPLETE INABILITY OF A HIP JOINT IN FULL EXTENSION OF THE THIGH).^[16]

In the meantime, conciliatory proceedings were conducted on respondent's complaint but no settlement was arrived at.

In respondent's position paper, he proffered that the compensability of an illness is not dependent on whether it is work connected or not, it being sufficient that it was contracted during the term of the employment contract.^[17] Additionally, he proffered that since he could no longer engage himself as a seafarer, he is entitled to disability benefits for total and permanent disability.^[18]

Petitioners, on the other hand, insisted that the filing of the complaint was premature since respondent was under continuous treatment, and while there was possibility that he might end up disabled, he might also end up fully cured and fit to work.^[19] In any event, petitioner emphasized that respondent's condition arose from a pre-existing illness, hence, not compensable.^[20]

By Order^[21] of April 4, 2001, the Labor Arbiter directed respondent to submit himself before the Employees Compensation Commission or any government hospital for physical examination in order to determine whether he is fit to work, or in the event that he is disabled, to determine the extent of his disability.

Complying, respondent submitted himself for evaluation at the Philippine General Hospital. In the medical certificate dated June 25, 2001 issued by the attending orthopedic surgeon, Dr. Rafael Cruz Bundoc, the following pertinent portion is noted:

Presently, patient is ambulant with no hip pain. Patient however has limited range of motion over his left hip joint compared to the right, and has difficulty in squatting. Patient also cannot move briskly in going up and down stairways, walking in ramps and embankments. Difficulty in running is conspicuous even for very short distance.

Considering that the medical wall of his acetabulum over the operated side is thin, there is a danger that he might develop protusio acetabuli or some other attrition problems in the future. With these clinical conditions, it is not advisable for the patient to engage in manual work that would entail prolonged standing, running especially carrying heavy objects.^[22] (Underscoring supplied)

By Decision^[23] of October 18, 2001, the Labor Arbiter declared that respondent was entitled to disability benefits, equivalent to half of Grade 9 as found by the company-designated physician, Dr. Tiong Sam N. Lim. Held the Arbiter:

x x x x

As established, parties signed a POEA contract, the terms and conditions are specified therein. One of the provisions of the contract states that the company-designated physician determines the seaman's disability grading.

x x x x

The contract of employment specifically mentions company-designated physician. Dr. Tiong Sam N. Lim, M.D., who opined and suggested that complainant's disability grading would be half of Grade 9 (Complete inability of a hip joint in full extension of the thigh). To agree to the claim of complainant would be to encourage and disregard and violate the government approved contracts, in effect, promoting disrespect to government authorities.^[24]

The Arbiter thus disposed:

WHEREFORE, judgment is hereby rendered ordering NYK Fil Ship Management, incorporated to pay Lauro Hernandez his disability benefit in the amount of US\$6,530.00 or its equivalent in Philippine Currency at the rate of exchange prevailing of actual payment.

Other claims are dismissed for lack of merit.

Ten percent of the award as attorney's fees.

SO ORDERED.^[25] (Underscoring supplied)

Respondent appealed to the National Labor Relations Commission (NLRC), claiming that there was prima facie abuse of discretion on the part of the Labor Arbiter in not awarding permanent and total disability benefits, as well as moral and exemplary damages.^[26]

Respondent averred that there is no such thing as an impediment grade of ½ of Grade 9 under the POEA Standard Employment Contract as the company-designated physician could only choose among the impediment grades of 1 to 14.^[27] He further averred that given petitioners' company-designated physician opinion that it would not be advisable for respondent to resume work as a seafarer, he is entitled to permanent total disability compensation.^[28]

The NLRC found that while there was an interim grading of respondent's disability as suggested by the company-designated physician, petitioners were remiss in their duty to have the degree of complainant's disability assessed thereafter and while he was undergoing treatment and rehabilitation as provided in the standard employment contract.^[29]

The NLRC thus ruled that petitioners' negligence, coupled with the fact that the nature of the illness of respondent renders him incapable of pursuing his profession as a seafarer, sufficed to categorize respondent's disability as permanent total disability.^[30] Hence, it modified the decision of the Labor Arbiter, viz:

WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED. Accordingly, respondents are hereby ordered to jointly and severally pay the complainant the peso equivalent at the time of actual payment of the sum of SIXTY THOUSAND US DOLLARS (US \$60,000), representing total disability benefits, plus ten percent thereof as and by way of attorney's fees.

SO ORDERED.^[31] (Underscoring supplied)

Petitioners' motion for reconsideration^[32] having been denied by Resolution^[33] of August 30, 2002, they elevated the case to the Court of Appeals on a petition for certiorari.^[34]

By Decision^[35] of August 18, 2003, the Court of Appeals affirmed that of the NLRC.

Their motion for reconsideration of the appellate court's decision having been denied,^[36] petitioners lodged the present petition for review, faulting the appellate court as follows:

- I. The Appellate Court Disregarded The Terms And Conditions Of The POEA Standard Employment Contract When It Rendered Petitioners Liable To Private Respondent Hernandez For Disability Benefits;
- II. Corollarily, The Appellate Court Failed To Give Due Weight And Consideration To The Assessment Made By The Company-Designated Physicians As To Private Respondent Hernandez's Disability; And
- III. The Appellate Court Found Private Respondent Hernandez With Grade 1 Disability And Awarded Him Disability Benefits In The Amount Of US\$60,000.00 Which Is Equivalent To A Finding Of Total And Permanent Disability, Despite The Lack Of Any Basis Therefor.
^[37]

Petitioners contend that the appellate court failed to consider that the condition of respondent pre-existed his employment, thereby limiting, if not negating their liability.^[38]

The petition is meritorious.

A seafarer is a contractual, not a regular employee, and his employment is contractually fixed for a certain period of time.^[39] His employment, including claims for death or illness compensations, is governed by the contract he signs every time he is hired,^[40] and is not rooted from the provisions of the Labor Code.^[41]

Provision number 2 of respondent's employment contract specifically provides that "the terms and conditions of the revised Employment Contract governing the employment of all seafarers approved per Department order No. 33 and Memorandum Circular No. 55 both series of 1996 shall be strictly and faithfully observed."^[42]