

FOURTH DIVISION

[CA-G.R. SP NO. 135679, March 18, 2015]

ALSTER INTERNATIONAL SHIPPING SERVICES, INC., JOHANN MK BLUMENTHAL GMBH & CO. KG AND FELIX G. VALENZONA, PETITIONERS, VS. ENRICO GAVIOLA GANTANG, JR. AND NATIONAL LABOR RELATIONS COMMISSION THIRD DIVISION, RESPONDENTS.

DECISION

BALTAZAR-PADILLA, J.:

This petition^[1] for *certiorari* under Rule 65 of the Rules of Court with prayer for the issuance of temporary restraining order (TRO) and/or preliminary injunction impugns the Decision^[2] dated February 26, 2014 of the Third Division of the National Labor Relations Commission (NLRC) and its Resolution^[3] dated March 31, 2014 in NLRC LAC No. (OFW-M) 01-000130-14(8).

The antecedent facts as synthesized by the NLRC are as follows:

"Respondent Alster International Shipping Services, Inc., a licensed domestic manning agency, hired complainant Enrico Gaviola Gantang, Jr. as Wiper, on behalf of Johann MK Blumenthal GMBH & Co. KG, the foreign principal, to work on board 'MV ANNA-DOROTHEA' for a period of eleven (11) months. He commenced his employment on September 20, 2012.

Complainant averred that on December 23, 2012, the Chief Engineer directed him to assist in repairing the remote of the gangway. While holding the handle, the Chief Engineer opened the electric panel board controlling the gangway and the power turned on. The motor suddenly operated and accidentally complainant injured his right hand. He suffered an open fracture of the 4th metacarpal.

Complainant was repatriated on February 8, 2013. Upon arrival in Manila, he reported to the respondents and was referred to the company-designated physician. He underwent treatment and therapy, but his condition did not improve. He inquired from the company-designated physician when he could go back to work, but the latter did not give him an answer.

Thus, on May 22, 2013, complainant consulted Dr. Fidel Magtira, and after tests and evaluation, the doctor declared him as permanently unfit to work. He continued the therapy sessions until the respondents terminated his medical accommodation. He claimed his disability compensation benefit, but the respondents refused to pay. Hence, he

filed this complaint.

Respondents, on the other hand, admitted the complainant's deployment onboard its vessel, and his early repatriation for medical reason. They averred that on December 22, 2012, he sustained a laceration on his right hand when it was hit by a metal. He was given anti-tetanus and suturing in a hospital in Mangalore. His x-ray revealed a fracture of his 4th metacarpal. Thus, he was repatriated, and upon arrival in the Philippines, he was referred to the NGC Medical Clinic, Inc. He underwent surgical procedure, Open [R]eduction with Internal Fixation using plates and screws. On August 30, 2013, the company-designated physician assessed him with Disability Grade 10. Respondents assert that complainant is entitled to payment of disability benefit equivalent to Grade 10 only.”^[4]

On January 13, 2014, the Labor Arbiter rendered judgment in favor of herein respondent Enrico Gaviola Gantang, Jr., thus -

“ACCORDINGLY, respondents Alster International Shipping Services, Inc. and Johann MK Blumenthal GMBH & Co. KG are ordered, in solidum, to pay the following to complainant:

a) TOTAL AND PERMANENT DISABILITY BENEFIT of US\$60,000.00 in its Peso equivalent at the rate of exchange prevailing at the time of actual payment or execution;

b) MORAL DAMAGES of PhP50,000.00;

c) EXEMPLARY DAMAGES of PhP50,000.00; and

d) ATTORNEY'S FEES in an amount equivalent to ten (10%) or the total amount herein awarded.

The foregoing awards shall be subject to 5% withholding tax upon payment/execution **only where the same is applicable.**^[5]

All other claims are **DENIED** for lack of merit.

Respondent Felix G. Valenzona is **EXONERATED** from all liabilities.

SO ORDERED.”^[6]

The Labor Arbiter ruled that respondent Gantang, Jr. is entitled to total disability benefit because the injury he sustained while working prevented him from working for more than 120 days. The Medical Report issued by Dr. Magtira on May 22, 2013 was likewise given great weight where it was stated that “[I]t is worth mentioning also that Mr. Gantang is a right handed person. xxx He is therefore permanently UNFIT in any capacity for further sea duties.” In awarding moral damages, exemplary damages and attorney's fees, the Labor Arbiter reasoned out in this wise:

“Moral damages are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety,

besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly caused a person.

On the other hand, exemplary damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. It is awarded as a deterrent to socially deleterious actions. In quasi-delict, exemplary damages are awarded when the act or omission which caused injury is attended by gross negligence.

From the facts established by complainant's [*herein respondent Gantang, Jr.*] evidence, respondents [*herein petitioners*] failed to pay the claims of complainant for total and permanent disability benefits, and sickness allowance. It should be stressed that complainant is simply claiming what is due him pursuant to contractual provisions, i.e. the POEASEC. 'Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.' Respondents' unjustified refusal to comply with their obvious legal and contractual obligations constitute bad faith for having intentionally breach its (sic) sworn duties arising from law and contract, that partakes of the nature of fraud for having failed or omitted the payment of sickness allowance and reimbursement of medical expenses which involve a breach of legal and contractual duty resulting in damage to complainant. Thus, moral damages of PhP50,000.00 and exemplary damages of PhP50,000.00 is (sic) hereby assessed against respondents.

As to attorney's fees, the same is justified under Article 2208 (2) of the Civil Code. Since complainant was compelled to litigate to secure his disability benefit, the award of the said fees is justified. Further, in *Skipper United Pacific, Inc., et al. v. Doza, et al.*, the award of attorney's fees at ten (10%) is based on the total claims of the employee."^[7]

Herein petitioner Felix G. Valenzona who is the President of petitioner Alster International Shipping Services, Inc. was absolved from all liabilities on the ground that he was only acting as corporate agent and so the obligations incurred by him as corporate officer was not his direct accountability but that of the corporation he represents.^[8]

On February 26, 2014, the NLRC resolved herein petitioners' appeal by affirming the decision of the Labor Arbiter but deleting the award for moral and exemplary damages.^[9]

According to the NLRC, the fracture on the metacarpal of herein respondent Gantang, Jr. can be considered as Grade 1 disability and not merely Grade 10 because he has lost his ability to grip and hold objects as well as his ability to lift and carry. He has lost his ability to perform his work as a Wiper as a result of his injury sustained while performing his work that is why herein petitioners have not offered to re-hire him despite their stand that his disability is not total and permanent.

The NLRC further ruled that "the law does not require that the disease sustained

should be incurable to be compensable but what is important is he is unable to perform his customary work for more than 120 days. It does not mean absolute helplessness because it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity."

Although the NLRC sustained the Labor Arbiter's finding that respondent Gantang, Jr. is entitled to permanent and total disability benefit, it deleted the award for moral and exemplary damages for lack of material basis since herein petitioners provided him with immediate medical treatment and merely relied on the company-designated doctor's findings. Consequently, the amount of attorney's fees which should be awarded to respondent Gantang, Jr. is only 10% of his disability compensation.^[10]

On his partial appeal before the NLRC, respondent Gantang, Jr. insisted that herein petitioner Felix G. Valenzona should be held solidarily liable with Alster International Shipping Services, Inc. and Johann MK Blumenthal GMBH & Co. KG since he is the president of Alster International Shipping Services, Inc.

On the other hand, herein petitioners moved for partial reconsideration of the NLRC Decision insisting that respondent Gantang, Jr. is not entitled to permanent total disability benefit since he was only given partial disability grade 10 by the company-designated physician 203 days from his repatriation which was within the 240-day period required by law. The 120-day doctrine is no longer controlling because it has already been superseded by the pronouncement of the Supreme Court in the 2013 case *Magsaysay Maritime Corporation and Westfal-Larse and Co. AS vs. NLRC and Wilcon Capoy*. Hence, the complaint for permanent total disability benefit filed by respondent Gantang, Jr. against them should be dismissed.

On March 31, 2014, the NLRC resolved herein respondent Gantang, Jr.'s partial appeal from the decision of the Labor Arbiter and his motion for reconsideration of the February 26, 2014 NLRC decision. At the same time, it passed upon herein petitioners Alster International Shipping Services, Inc. and Johann MK Blumenthal GMBH & Co. KG's prayer for the dismissal of respondent Gantang, Jr.'s complaint for permanent total disability benefit. Thus -

"WHEREFORE, the complainant's [*herein respondent Gantang, Jr.*] partial appeal and motion for reconsideration are GRANTED. The Decision of the Labor Arbiter exonerating Felix G. Valenzona from any liability is SET ASIDE, and a new one issued holding him jointly and severally liable for the judgment award with Alster International Shipping Services, Inc. and Johan MK Blumenthal GMBH & Co. KG.

The Motion for Reconsideration filed by Alster International Shipping Services, Inc. and Johan MK Blumenthal GMBH & Co. KG is DENIED for lack of merit.

SO ORDERED."^[11]

Hence, this recourse by petitioners which hinged on two issues, to wit:

"I. Whether or not Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in

awarding total and permanent disability benefits to Private Respondent.

II. Whether or not Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding attorney's fees to Private Respondent."^[12]

Petitioners insist that respondent Gantang, Jr. is not entitled to total and permanent disability benefit since he only suffered a partial disability fracture of the fourth metacarpal finger which the company-designated physician rated as Grade 10 disability only. A fracture of a finger cannot be considered as a Grade 1 total and permanent disability either medically or under legal contemplation.^[13] The fact that respondent Gantang, Jr. was under treatment for more than 120 days will not automatically entitle him to an award of total and disability benefit citing *Magsaysay Maritime Corporation and Westfal-Larsen and Co. A/S vs. Wilson Capoy* ^[14] where it was held that -

"The *Vergara* ruling, heretofore mentioned, gives us a clear picture of how the provisions of the law, the rules and the POEA-SEC operate, thus

-

'[T]he seafarer, upon sign-off from his vessel, must report to the company designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a partial or total disability already exists.** The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.'"^[15] (*Underscoring and Emphasis supplied by petitioners*)

Petitioners further posit that the assessment of respondent Gantang, Jr.'s personal physician Dr. Fidel Magtira in May, 2013 should not be given weight because his diagnosis that respondent Gantang, Jr. is permanently unfit to work was issued after only one day of the latter's consultation without performing any diagnostic procedure on him.¹⁶ Further, Section 20 (A), paragraph (2) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) which is a binding contract between herein parties clearly provides that it is the company-designated physician who is mandated to determine the fitness or disability of a seafarer, viz -