

ELEVENTH DIVISION

[CA-G.R. SP No. 128192, January 23, 2014]

TSM SHIPPING PHILS., INC., NORDEN DENMARK AND ALFONSO DEL CASTILLO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND ISIDRITO C. BORGONOS, RESPONDENTS.

DECISION

SADANG, J.:

This is a petition for certiorari with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction seeking to set aside the August 29, 2012 Decision^[1] of the National Labor Relations Commission (Fourth Division) in NLRC LAC No. OFW (M) 04-000372-12 (NLRC NCR Case No. OFW [M] 08-12545-11), and the October 30, 2012 Resolution^[2] denying the Motion for Reconsideration.

Antecedents of the Petition

On August 15, 2011, private respondent Isidrito C. Borgonos (hereafter, respondent) filed with the Labor Arbiter a complaint against TSM Shipping Philippines, Inc. (TSM), Norden Denmark, and Alfonso Del Castillo, president of TSM, for payment of permanent disability compensation, sick wages, reimbursement of transportation expenses, moral and exemplary damages and attorney's fees.^[3]

Respondent alleged in his Position Paper^[4] that TSM, acting on behalf of its principal, Norden Denmark, had hired him as Master on the vessel "Nord Seoul". His contract was for a fixed duration of 6 months at a basic salary of US\$2, 240.00 exclusive of overtime and other benefits. Each time he was deployed to a new assignment, he underwent extensive and rigorous pre-employment medical examination (PEME) and was always found to be fit for sea duty. Sometime in the first week of February 2011, while he was performing his duty, he experienced severe chest pain, difficulty in breathing, numbness and dizziness. Because his condition did not improve, he so reported to the principal and he was assured that he will be given medical treatment at the next port. He was treated in a clinic at the port of Mexico and required to continue working, which aggravated his condition. Later, he was referred to a hospital in Rizhao, China and was found to have "hypertension, left aorta enlarge and diabetes". He was ordered to return to the vessel but he could no longer work due to his condition. When the vessel reached the port of Taiwan on April 8, 2011, respondent was repatriated to the Philippines and arrived in Manila the next day. He was sent to the company-designated physician and then underwent laboratory tests at the University Physicians Medical Center. His cranial CT scan on August 11, 2011 showed that he had "microvascular ischemic changes and mild cerebral atrophy"^[5] while his 2D Echo and Doppler on August 31, 2011 revealed that he had "concentric left ventricular hypertrophy with

preserved left ventricle systolic function.”^[6] On August 18, 2011, respondent consulted a neurologist, Dr. Angel V. Luna, who diagnosed him as having “tension headache; most probably work oriented.”^[7] His follow-up consultation with Dr. Luna on September 1, 2011 showed that he has “ischemic changes with brain atrophy.”^[8]

On October 20, 2011, respondent consulted an independent physician, Dr. Manuel C. Jacinto, Jr., who found him to be suffering from “concentric left ventricular hypertrophy with preserved left ventricle systolic function; mild cerebral atrophy with ischemic changes.” In his medical certificate, Dr. Jacinto remarked thus: “Patient's illness/injury started at work and symptoms of easy fatigability and general body malaise persisted despite management and medications, thus, he was assessed to be physically unfit to go back to work. Total permanent.”^[9]

Respondent averred that being a Master he is considered a senior officer and pursuant to the Collective Bargaining Agreement (CBA) between the Associated Marine Officers & Seaman's Union of the Philippines (AMOSUP) and the International Transport Workers' Federation, London (ITF), he is entitled to permanent disability compensation of US\$148,500.00 regardless of his medical disability grade because he is no longer fit to work as seafarer. Respondent also alleged that his illness, cardiovascular disease, is an occupational disease under Sec. 32-A, par. 11 of the POEA-SEC. He averred that under Sec. 20, par. B, sub-par. 4 of the POEA-SEC, illnesses not listed in Sec. 32 are disputably presumed as work-related. Nonetheless, he argues that the CBA should prevail over the POEA-SEC because it provides for higher benefits.

Citing *Crystal Shipping, Inc. v. Natividad*,^[10] respondent argued that his disability is permanent because he has been unfit for work beyond the 120-day period. He also cited the doctrine that the test to determine the gravity of disability is the impairment or loss of earning capacity and not its mere medical significance. Contending that petitioners were in bad faith for refusing to pay a clear obligation, respondent prayed for the award of moral and exemplary damages and attorney's fees.

In their Position Paper,^[11] petitioners alleged that respondent's claim is governed by the Thome Shipmanagement Vessels Maritime Officers' Agreement of 2008 (MOA, for brevity). They alleged that under the MOA, a seafarer is entitled to full compensation of US\$150,000.00 only if he suffers injury arising from an accident, however, if his disability is due to illness or disease, as in this case, he is entitled only to 15% of said amount, or US\$22,500.00.

Petitioners further argued that the company-designated physician assessed respondent's disability as Grade 7 which entitles him only to US\$20,900.00 under the POEA-SEC. They contended that the assessment of Dr. Nicomedes Cruz, company-designated doctor, is entitled to weight and credence because he extensively examined, treated and monitored respondent over a reasonable period of time. They further argued that even if the illness or injury lasts for more than 120 days, it does not mean that it is total and permanent because what matters is the degree of disability as determined by a doctor and not the length of the treatment period of the seafarer.

Respondent filed a Reply^[12] alleging that the 120-day period lapsed without the company-designated physician having declared him fit to work. He countered that the company-designated physician should not have given him a Grade 7 disability because he can no longer perform his usual work as a seafarer. He pointed out that the MOA submitted by petitioners does not apply and it provides for benefits that are inferior to those in the POEA-SEC.

Petitioners filed a Reply (To Complainant's Position Paper)^[13] alleging that what applies is the MOA and not the CBA submitted by respondent because the latter covers the period 2008-2009 and respondent boarded the vessel on October 18, 2010. They also argued that, unlike the company-designated physician, the doctor of respondent came out with his findings after only one consultation.

Respondent filed a Rejoinder^[14] reiterating that he is still not fit to resume his duties as a seafarer.

Petitioners filed a Rejoinder^[15] stating that if neither the MOA nor the CBA cannot be applied to this case, the POEA-SEC should govern.

On March 7, 2012, the Labor Arbiter (LA) rendered a Decision,^[16] the decretal part of which reads:

WHEREFORE, the respondents (petitioners) are hereby declared to be jointly and severally liable for the complainant's disability compensation amounting to US\$22,500.00, sickness wages amounting to US\$6,720.00, and attorney's fees amounting to US\$2,922.00, OR A TOTAL OF US\$32,142.00 or its Philippine peso equivalent at the time of actual payment.

SO ORDERED.^[17]

Respondent interposed an appeal with the NLRC and filed his Memorandum of Appeal.^[18] He prayed that the LA's Decision be modified and petitioners be directed to pay a total permanent disability compensation of US\$148,500.00.

Petitioners also filed a Notice of Partial Appeal with Memorandum of Partial Appeal.^[19] They prayed that the LA Decision be modified by deleting the award for sickness allowance and attorney's fees. They also filed a Comment (On Complainant-Appellant's Memorandum on Appeal).^[20]

On August 29, 2012, the NLRC rendered the assailed Decision with the following *fallo*:

WHEREFORE, premises considered, the appealed Decision is MODIFIED to the effects that: (1) respondents, jointly and severally, are ordered instead to pay complainant the amount of US\$60,000.00 or its Peso equivalent at the time of payment as permanent total disability benefit, plus ten percent (10%) thereof as attorney's fees; and (2) the award for sickness allowance is set aside.

SO ORDERED.^[21]

Petitioners filed a Motion for Reconsideration^[22] but it was denied in a Resolution^[23] dated October 30, 2012; hence, this petition on these grounds:

1. WITH DUE RESPECT, THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHEN IT AWARDED FULL DISABILITY COMPENSATION IN FAVOR OF THE PRIVATE RESPONDENT;

2. WITH DUE RESPECT, THE PUBLIC RESPONDENT COMMITTED A SERIOUS AND REVERSIBLE ERROR WHEN IT APPLIED THE POEA STANDARD EMPLOYMENT CONTRACT IN AWARDED DISABILITY COMPENSATION INSTEAD OF THE CORRECT COLLECTIVE BARGAINING AGREEMENT; AND

3. WITH DUE RESPECT, THE PUBLIC RESPONDENT COMMITTED A SERIOUS AND REVERSIBLE ERROR WHEN IT SUSTAINED THE AWARD OF ATTORNEY'S FEES IN FAVOR OF THE PRIVATE RESPONDENT.^[24]

On June 17, 2013, this Court issued a Resolution^[25] denying petitioners' prayer for issuance of temporary restraining order and writ of preliminary injunction.

Ruling

The petition is bereft of merit.

It must be stated that petitioners do not claim that the disability of respondent is not work-related. There is also no question that respondent's disability is due to illness or disease.

Petitioners contend that respondent's disability benefits should have been determined on the basis of the MOA because it provides for higher benefits than the POEA-SEC. They aver that under the MOA, respondent is entitled to 15% of US\$150,000.00 or US\$22,500.00 but under the POEA-SEC, he will only receive US\$20,900.00.

The contention is untenable. The MOA shows on its face that it is an agreement between the Singapore Maritime Officers' Union and the Thome Ship Management PTE LTD of Singapore. Suffice it to state, that respondent is not a member of the Singapore Maritime Officers' Union but of AMOSUP, hence, his hiring by petitioners cannot be governed by the MOA. Moreover, contrary to the contention of petitioners, respondent is entitled to much higher benefits under the POEA-SEC as will be shown hereunder.

Respondent's claim for disability benefits is governed by Section 32 of the POEA-SEC and the relevant provisions of the Labor Code and the Amended Rules on Employees Compensation (AREC) Implementing Title II, Book IV of the Labor Code.

The Labor Code provides:

Article 192. PERMANENT TOTAL DISABILITY. ---

x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

x x x x (underscoring supplied)

Section 2 (b), Rule VII of the AREC states:

DISABILITY. --- x x x

(b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules. x x x (underscoring supplied)

Petitioners alleged in their Position Paper that respondent was diagnosed with "Hypertension and Mild Hypertensive Retinopathy"^[26] and the company-designated physician assessed respondent's disability thus: "The final disability grading under the POEA schedule of disabilities is Grade 7 – moderate residuals or disorder of the intra-thoracic organ".^[27] On the other hand, respondent's doctor, Dr. Jacinto, diagnosed his illness as "concentric left ventricular hypertrophy with preserved left ventricle systolic function; mild cerebral atrophy with ischemic changes".^[28] Dr. Jacinto determined that respondent's disability is total and permanent and he is unfit to go back to work. He noted that respondent's "symptoms of fatigability and general body malaise persisted despite management and medication."

We find that, contrary to the contention of petitioners, the NLRC did not commit grave abuse of discretion in giving more weight and credence to the findings of Dr. Jacinto. The finding of the company-designated doctor that respondent had "moderate residuals or disorder of the intra-thoracic organ" is vague and general and is not consistent with the symptoms of respondent. On the other hand, Dr. Jacinto's diagnosis is more specific as it points to abnormalities in the heart and explains the symptoms of fatigue and general body malaise of respondent. The diagnosis is even consistent with the Medical Report^[29] of the NGC Medical Specialist Clinic, petitioners' own evidence, which shows that respondent had an elevated blood pressure of 140/90 and elevated levels of fasting blood sugar (FBS) and bad cholesterol (LDL) but low level of good cholesterol (HDL). The report also noted that respondent complained of dizziness with numbness of the left arm. We quote with approval the findings of the NLRC on this point:

Complainant was repatriated on April 8, 2011 with a medical issue. On April 12, 2011, complainant was diagnosed by the company-designated physician to have hypertension (p. 109). On April 12, 2011 [sic], complainant was seen by an eye specialist and was found to have mild hypertensive retinopathy (p. 110 Rollo). As of June 30, 2011, it was noted that complainant's blood pressure and cholesterol level remain elevated and complainant complained of dizziness and headache with numbness of the left arm, and so, the company-designated physician recommended a CT Scan of the brain (p. 112 Rollo). CT Scan result released on August 15, 2011 revealed that complainant has microvascular ischemic changes and mild cerebral atrophy (p. 49 Rollo). Echocardiographic examination conducted on August 31, 2011 revealed