

## THIRTEENTH DIVISION

[ CA-G.R. SP No. 121583, February 28, 2014 ]

**SCANMAR MARITIME SERVICES INC. / EDGARDO J. CANOZA / DS-SCANMAR CREWING SERVICES, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND JULIE SANONG, RESPONDENTS.**

### DECISION

**YBAÑEZ, J.:**

This is a Petition for Certiorari with Urgent Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order<sup>[1]</sup> seeking to reverse and set aside the Decision<sup>[2]</sup> dated 06 June 2011 and the Resolution<sup>[3]</sup> dated 19 July 2011 of the National Labor Relations Commission-Second Division (NLRC). The 06 June 2011 Decision affirmed with modification the Decision<sup>[4]</sup> dated 30 November 2010 of the Labor Arbiter, while the 19 July 2011 Resolution denied the petitioners' Motion for Reconsideration.

### ANTECEDENTS

Pursuant to a Philippine Overseas Employment Administration-approved contract, private respondent Julie Sanong (Sanong) was employed by petitioners as Oiler on board vessel Cape Brett for a period of nine (9) months. He boarded the ship on 28 May 2009.<sup>[5]</sup>

On 17 November 2009, Sanong slipped while working on the vessel's exhaust valve tappets.<sup>[6]</sup> He immediately reported the incident to the Chief Engineer.<sup>[7]</sup> Thereafter, Sanong complained of low back pain<sup>[8]</sup> which radiated to his leg.<sup>[9]</sup> The private respondent was taken to a doctor in Calcutta, India, but he was merely given pain medication. His condition failed to improve. When the vessel arrived in Malaysia, he was taken to the Pantal Hospital and was diagnosed with *Prolapsed Intervertebral Disc*.<sup>[10]</sup>

Sanong was repatriated on 27 November 2009. He was referred to the medical care of the company-designated physician, who, in turn, referred him to an orthopedic surgeon.<sup>[11]</sup> In the report of the company-designated physician dated 09 December 2009, the private respondent was reported to have *Right L5 Radiculopathy Right Partial with Ongoing Denervation Mild* and was advised to start rehabilitation therapy.

Subsequently, Sanong underwent a magnetic resonance imaging of his lumbosacral spine on 23 January 2010 which showed *Lumbar Spondylosis at L4-5 with inferiority directed central and right paracentral disc extrusion compressing the traversing right L5 nerve root; L5-S1 central and right paracentral disc protrusion and mild L2-3 and*

*L3-4 disc bulges associated with central tears.*<sup>[12]</sup> He underwent *Laminectomy and Discectomy with Diam L4-L5* on 09 March 2010.<sup>[13]</sup>

Ninety-nine (99) days after his repatriation, the company-designated doctor issued his closest interim assessment with Grade 8-moderate rigidity or 2/3 loss of motion or lifting power of the trunk.<sup>[14]</sup> In a report dated 15 April 2010, the company's attending specialist maintained the Grade 8 assessment. Sanong was offered the monetary equivalent of said grading, but he refused.<sup>[15]</sup>

The private respondent filed a full disability complaint with the public respondent.

Thereafter, Sanong sought the opinion of Dr. Escutin who found that the nerve roots were permanently injured and the nerve tissues have no capacity to repair or heal it.<sup>[16]</sup>

The parties failed to reach a settlement during the mediation proceedings.<sup>[17]</sup> After the submission of Position Papers, the Labor Arbiter decided in favor of the private respondent, viz:

"IN VIEW OF THE FOREGOING, the respondent agency should pay the complainant of his permanent and total disability of US\$60,000.00; sickness allowance of US\$2,332.00 and 10% of the total award as attorney's fees."<sup>[18]</sup>

Undaunted, the petitioners appealed before the National Labor Relations Commission. In its 06 June 2011 Decision, the public respondent sustained the findings of the Labor Arbiter, but deleted the award of sickness allowance.<sup>[19]</sup>

The petitioners moved for reconsideration, but their motion was denied on 19 July 2011.<sup>[20]</sup>

## **ISSUES**

Hence, the instant petition where petitioners raised the following grounds<sup>[21]</sup>:

### **"I.**

**PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE SCHEDULE OF DISABILITY AND IMPEDIMENT UNDER THE POEA SEC WHEN IT GRANTED PRIVATE RESPONDENT'S FULL DISABILITY CLAIM ON THE BASIS OF THE SEAFARER'S ALLEGED INABILITY TO RETURN TO SEAFARING DUTIES.**

### **II.**

**WHILE UPHOLDING THE AUTHORITY OF THE COMPANY-DESIGNATED PHYSICIAN, THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN SUSTAINING THE MEDICAL OPINION OF THE SEAFARER'S PERSONAL DOCTOR.**

**III.**

**PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING ATTORNEY'S FEES."**

**OUR RULING**

Petitioners averred that private respondent's claim must be resolved based on the provisions of the POEA SEC which provides its own Schedule of Disability or Impediment of Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted, Disability Allowance, and its own guidelines on Occupational Diseases. In turning down the company-designated physician's disability grading, public respondent NLRC committed a palpable mistake.<sup>[22]</sup> According to the petitioners, the private respondent's medical condition does not fall under Grade 1 disabilities.<sup>[23]</sup>

In addition, petitioners posited that the governing law on private respondent's claim does not require that he be declared fit to work after the prescribed treatment. After assessing the seafarer's medical condition, the company-designated physician may declare him fit to work or determine his permanent disability entitlement.<sup>[24]</sup>

The petitioners further stated that the public respondent arbitrarily ignored the inherent defects of the medical certificate of Dr. Escutin.<sup>[25]</sup>

They also asseverated that the award of attorney's fees runs afoul with prevailing jurisprudence enjoining award of attorney's fees except when there is express finding of bad faith.<sup>[26]</sup>

On the other hand, private respondent claimed that the factual issue of whether or not he is entitled to permanent total disability benefits equivalent to the maximum Grade 1 disability compensation under the POEA SEC had been resolved in the affirmative by both the Labor Arbiter and the NLRC.<sup>[27]</sup>

The private respondent asserted that the Grade 8 assessment of the company doctor is contrary to the jurisprudence laid down in *Remigio vs. NLRC, G.R. No. 159887*, 12 April 2006.<sup>[28]</sup> From the date of his repatriation on 27 November 2009 up to the filing of the Complaint on 29 April 2010, which is more than One Hundred Twenty (120) days, and even after almost two (2) years, Sanong has not recovered from his medical condition, thus, he cannot return to his previous work as seafarer.<sup>[29]</sup>

Another argument of the private respondent is that the mere fact that his medical condition does not fall under Section 32 of the POEA SEC does not mean that he cannot be given a permanent total disability assessment which is equivalent to Grade 1 disability.<sup>[30]</sup>