SPECIAL SIXTEENTH DIVISION

[CA-G.R. SP NO. 125063, April 30, 2014]

MAGSAYSAY MARITIME CORP. CRUISE SHIPS CATERING AND SERVICES INTERNATIONAL AND MARLON P. ROÑO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) PROMULGATED: AND ARNEL DE LUNA REYES,RESPONDENTS.

D E C I S I O N

VILLON, J.:

Assailed in this Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure is the decision dated February 21, 2012[1] of public respondent National Labor Relations Commission (NLRC), Fourth Division, in NLRC LAC No. OFW (M)-08-000662-11, which reversed and set aside the decision dated May 30, 2011[2] of Labor Arbiter Gaudencio P. Demaisip, Jr. in NLRC NCR Case No. 01-00586-11 which, in turn, declared that private respondent is not suffering from disability, thereby dismissing the complaint.

In the assailed decision of the NLRC, petitioners were ordered jointly and severally to pay private respondent, his permanent total disability benefit in the amount of EIGHTY NINE THOUSAND ONE HUNDRED US DOLLARS (US$89,100.00) or its peso equivalent at the time of actual payment, plus the amount equivalent to ten percent (10%) thereof by way of attorney's fees.

Likewise assailed is the resolution dated April 16, 2012[3] of the NLRC, which denied petitioner's motion for reconsideration of the said decision.

The facts of the case, as quoted from the decision of the NLRC, are as follows:

> "Complainant[4], in his Position Paper, alleged: that he had been employed by respondents since February 2004 initially as a third cook and later as second cook; that his latest contract with respondents to work as second cook on board the vessel 'Costa Serena' for eight months (Annex 'A' – Employment Contract); that his employment is covered by an overriding CBA between AMOSUP and the owners of the ship (Annex 'B' – CBA); that he was deployed after undergoing a pre-employment Medical Examination (Annex 'C'); that sometime in the third week of August 2010, while on duty, he experienced allergies in his scalp, fingers, nails, groin and upper part of his body, causing discomfort, itchiness and restlessness; that on August 28, 2010, he consulted the ship's physician who diagnosed him to have dermatitis and gave him medicines; that because his condition did not improve, the ship's physician referred him to a clinic in Bari which diagnosed him to have 'piodermite diffuse'

(Annex 'D' – Medical Referral); that he was medically repatriated on September 5, 2010 and he arrived in Manila on September 7, 2010; that he immediately reported to respondent manning agency which referred him to the Hospital of Infant Jesus where he was diagnosed to have Tinea Crusis Furunculosis and psoriasis and where he was treated continuously as out-patient; and that he also consulted Dr. Manuel C. Jacinto of Sta. Teresita General Hospital who assessed him to be physically unfit to go back to work and that his disability is total and permanent (Annex 'E' – Medical Certificate dated March 3, 2011).

On the other hand, in their Position Paper, respondents[5] averred: that complainant is not covered by a CBA (Annex '2' – Certification from AMOSUP); that on January 7, 2011, complainant embarked on board the cruise ship 'MV Costa Serena' as third cook; that complainant was reported to have suddenly exhibited scaly erithematous lesion accompanied by moderate to severe pruritus all over his body and he was diagnosed to have psoriasis (Annex '3'); that after a week of treatment, the adherent scaly skin had resolved (Annex '4' – Medical Report dated September 16, 2010); that meanwhile, complainant had fumuculosis (otherwise called boil or 'pigsa') for which he was given antibiotics; that in two weeks' time, his boil had resolved (Annex '5', Medical Report dated September 23, 2010); that he was given continuous medications for his skin lesions (Annex '6', Medical Report dated October 7, 2010); that after two more weeks of medications, only fine scales on the palm and in the scalp were seen (Annex '7', Medical Report dated October 28, 2010); that complainant's skin conditions have resolved after treatment (Annex '8'); that complainant was not rendered disabled (Annex '9'); that despite the opinion of Dr. Narciso Navarro (sic) that complainant's psoriasis is not work-related (annex '9'), respondents covered the expenses for his medical treatment and paid his illness allowance (Annex '10').”

On January 11, 2011, private respondent filed a complaint for payment of disability benefits, sickness allowance and damages as well as attorney's fees.

On May 30, 2011, the Labor Arbiter rendered a decision dismissing the complaint, declaring that private respondent is not suffering from any disability. The dispositive portion of the Labor Arbiter's decision simply states:

“IN VIEW OF THE FOREGOING, the complaint filed in the instant case is DISMISSED.

SO ORDERED.”

Private respondent appealed to the NLRC.

In a decision dated February 21, 2012, the NLRC granted private respondent's appeal and set aside the decision of the Labor Arbiter, disposing as follows:

“WHEREFORE, premises considered, the appealed Decision is hereby SET ASIDE and a new one is entered ordering respondents, jointly and severally, to pay complainant permanent total disability benefit in the amount of EIGHTY NINE THOUSAND ONE HUNDRED US DOLLARS (US4

89,100.00) or its Peso equivalent at the time of actual payment, plus ten percent (10%) thereof as and for attorney's fees.

Other claims are dismissed for lack of merit.

SO ORDERED."

Petitioners' motion for reconsideration of the NLRC decision was denied in its resolution dated April 16, 2012.

Hence, this petition anchored on the following grounds[6]:

I.

THE HONORABLE COMMISSION, FOURTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING BENEFITS UNDER AN ALLEGED CBA WHEN NO COPY OF THE SAME WAS SUBMITTED. EVEN AMOSUP (THE ASSOCIATED MARINE OFFICER'S AND SEAMEN'S UNION OF THE PHILIPPINES) CERTIFIED THAT THE PRIVATE RESPONDENT IS NOT A MEMBER OF THE UNION AND THE VESSEL "MV COSTA SERENA" IS NOT COVERED BY ANY CBA.

II.

THE HONORABLE COMMISSION, FOURTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE PRIVATE RESPONDENT'S ILLNESS IS WORK-RELATED AND BY NOT RECOGNIZING THE FACT THAT SUCH ILLNESS HAS ALREADY BEEN CURED AND RESOLVED.

III.

THE HONORABLE COMMISSION, FOURTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING ATTORNEY'S FEES IN FAVOR OF PRIVATE RESPONDENT.

Petitioners contend, among others, that the NLRC decision, awarding US$89,100.00 to private respondent as total and permanent disability benefits, constitutes grave abuse of discretion amounting to lack or excess of jurisdiction; that private respondent had anchored his claim on a purported Associated Marine Officers & Seamen's Union of the Philippines- Collective Bargaining Agreement (AMOSUP-CBA) but he had not attached an identification card or any proof showing his affiliation and membership with AMOSUP; that contrary to private respondent's allegations, AMOSUP had even denied that private respondent is a member thereof and had likewise denied that the vessel 'MV COSTA SERENA' is covered by any one of their CBAs.

Petitioners also argue that private respondent failed to justify his claim for compensation based on permanent and total disability pursuant to the Philippine Overseas Employment Agency (POEA) Standard Employment Contract; that Section 20 thereof provides that in order for an illness to be compensable, (a) it must be work-related and (b) it must have occurred during the term of the contract; that private respondent's condition, particularly psoriasis, was assessed as not work-

related by their company-designated physicians; that they conducted continuous treatment and examination on private respondent in consultation with specialists; that several extensive medical procedures were conducted on private respondent such as laboratory examinations and consultations with a dermatologist; that the NLRC committed grave abuse of discretion in ruling that the findings of the company-designated physicians were unsubstantiated and therefore deserve no consideration; that the company-designated physicians treated private respondent from his repatriation up to the time that the assessment on his medical condition was issued; that the assessment given by them, stating that his skin illness is not work-related deserves great weight as it is based on continuous treatment, extensive examination and after conducting several medical procedures.

Petitioners further argue that as stated in the company-designated physician's affidavit[7], private respondent's skin disease had no relation whatsoever to his work; that there was no evidence to support that his job as a Third Cook aggravated his illness; that psoriasis being a chronic auto-immune disease, the infected person's lesions come out when there is an overactive immune response of the body against substances and tissues normally present in the body and are not related to any working conditions on board the vessel; that aside from the fact that private respondent's skin disorder is not work-related, the same had finally improved and resolved/cured with medications; and that based on the medical findings of the company-designated physicians, private respondent is not suffering from any disability on account of psoriasis or even furunculosis.

Finally, petitioners contend that it is the company-designated physicians who are entrusted with the task of assessing the extent of the seaman's disability; that private respondent's prayer for disability compensation should have been denied since the company-designated physicians had declared his skin disorder as not work-related; that private respondent's doctor, Dr. Manuel C. Jacinto, Jr. (or "Dr. Jacinto") only saw him on March 3, 2011 and issued a medical certificate on the same day; that the medical certificate was issued a few months after the complaint was filed which shows that it was issued only for the purpose of supporting his claim and not for attesting to the accurate determination of his medical condition; that the contents of this plain and unsubstantiated medical certificate cannot prevail over the numerous consultations and medical procedures that private respondent had with the company-designated physicians; and that it is neither just nor equitable for private respondent to receive an award of attorney's fees for he is not entitled to any damages as they did not act in bad faith, there being valid defenses against his claims.[8]

In his *Comment*[9], private respondent argues that the NLRC decision is judicious as it is supported by substantial evidence and conforms to relevant jurisprudence; that even the company-designated physicians had confirmed that his condition is work related and work aggravated; that there is no truth to petitioners' contention that his skin disease had already resolved - the truth is, he was already rendered totally unfit as seafarer in any capacity; that no employer in his right mind will readily employ him taking into consideration his skin disease that spread throughout his body; that there was no clear declaration that he is already fit for work because the truth is that he is not fit for work anymore as he is suffering from severe skin disease that is apparent and visible throughout his body; that the company-designated physicians' declaration that his skin disease had already resolved is

inaccurate as it is not reflective of his actual physical and medical condition; that the company-designated physicians are considered as employees of petitioners as they are being retained for their medical services for which they receive regular retainers' fee; that on account of this special relationship between the company-designated physicians and petitioners, the former will at all times act to favor and protect the latter; that during the time that he was undergoing medication before the company-designated physicians, he was already aware of their apparent bias in favor of petitioners; that he was compelled to seek further medication, treatment and examination from an independent medical specialist for the purpose of obtaining a second opinion and to determine his actual condition; that Dr. Jacinto had thoroughly and exhaustively treated and examined him as an independent medical specialist; that after evaluating the result of his examination, medication and treatment, Dr. Jacinto had confirmed that his skin disease had deteriorated and had already rendered him totally unfit as seafarer in any capacity; and that the NLRC therefore had acted judiciously when it upheld the credible, independent and fair medical assessment made by Dr. Jacinto, consistent with the ruling in *HFS Philippines, Inc., et al. vs. Pilar*[10].

Private respondent further argues that even the POEA Standard Employment Contract recognizes the right of the seafarer to choose his own physician especially if the physician has the trust and confidence of the seafarer because this is the prime consideration in a doctor-patient relationship; that the medical assessment made by Dr. Jacinto is considered as a strong and relevant evidence in ths case as it is in the nature of a second opinion which is considered as competent and relevant evidence pursuant to the POEA Standard Employment Contract; that as shown by the evidence on record, he is not fit for work anymore despite being treated and examined by the company-designated physicians for more than 120 days; that as reported even by the company-designated physicians, the skin lesions and eruptions of his skin are already spreading throughout his body; that being already unfit for more than 120 days due to a work-related illness, he is already entitled to the full disability compensation in accordance with the CBA; that in compensation cases, what is being compensated under the law is not the absolute helplessness of the seafarer or the gravity of the illness or injury, but it is the loss of the opportunity to earn an income; and that considering that he had already lost his capacity to obtain further sea employment and opportunity to earn an income, he is now therefore entitled to the full permanent disability compensation in accordance with the CBA.

Finally, private respondent argues that petitioners' contention that his skin disease is not considered as work-related or work-aggravated illness is unmeritorious; that in fact, this was strongly belied by the medical assessment[11] of the company-designated physicians themselves; that prior to his deployment at the vessel, he was subjected to Pre-Employment Medical Examination (PEME) and he was found to be fit for work; that it was only in the course of the performance of his duties as Second Cook on board petitioners' vessel that he sustained his severe skin disease; that his job as Second Cook involved the handling of chemicals, ingredients and other food preparations, thus, it had contributed in the development of the illness that had rendered him unfit as seafarer in any capacity; that in compensation cases, the test of work relation or compensability of an illness is not the absolute certainty that the nature of employment had caused the illness of the worker, but it is the probability that it had contributed in the development, enhancement and deterioration of such illness even in a small degree; that his skin disease or