

ELEVENTH DIVISION

[CA-G.R. SP. NO. 123392, April 22, 2014]

SOLPIA MARINE AND SHIP MANAGEMENT, INC., AND MARINE KOREA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, AND FREDERICK I. ANTONIO, RESPONDENTS.

D E C I S I O N

ANTONIO-VALENZUELA, J.:

This is the Petition for Certiorari under Rule 65,^[1] filed by Solpia Marine and Ship Management, Inc., ("petitioner Solpia") and Marine Korea ("petitioner Marine"), imputing grave abuse of discretion on the part of the National Labor Relations Commission, Sixth Division ("NLRC") for issuing: 1) the Decision dated 6 June 2011^[2] ("assailed Decision") which affirmed the Decision issued by Labor Arbiter Gaudencio P. Demaisip, Jr. dated 27 January 2011;^[3] and the Resolution dated 28 December 2011^[4] ("assailed Resolution") which denied petitioners' Motion for Reconsideration.^[5]

The undisputed facts are as follows: on 6 July 2009, petitioner Solpia, a local manning agency, hired Frederick I. Antonio ("private respondent Antonio") as Bosun for the vessel M/V World Dynasty, owned by the principal, petitioner Marine. Private respondent Antonio's Contract of Employment^[6] was for a period of 9 months, with a basic salary of US\$ 680.00 per month excluding overtime and other benefits. Private respondent Antonio joined the M/V World Dynasty on 19 July 2009.

Private respondent Antonio alleged that on 14 October 2009, while performing his work duties, he suffered an accident which resulted to injury to his spinal column, and back pain. Private respondent Antonio reported his condition to the ship's Master. A day after the accident, or on 15 October 2009, private respondent Antonio was examined in Anyer, Indonesia, where he was diagnosed with "*LBP e.c. Spondylosis of Lumbar Spine; Multiple Gall Bladder Stone; Fatty Liver.*"^[7]

Due to private respondent Antonio's injury, he was repatriated and he arrived in the Philippines on 19 October 2009. Upon arrival, private respondent Antonio had several medical examinations and treatment (i.e., x-ray examination on 20 October 2009 at Manila Doctor's Hospital;^[8] medical examination on 9 November 2009 by Dr. Alvin Amador ["Dr. Amador"] at Nazarenes College Foundation Hospital;^[9] medical examination on 2 December 2009 by Dr. Amador at Nazarenes College Foundation Hospital;^[10] medical examination on 3 December 2009 by Dr. George Y. Hernandez ["Dr. Hernandez"] at Ippokratis Diagnostic Services Center Inc.;^[11] medical examination on 14 December 2009 by Dr. Amador at Nazarenes College Foundation Hospital;^[12] medical examination on 29 June 2010 by Dr. Manuel C. Jacinto Jr., ["Dr. Jacinto"] at Sta. Teresita General Hospital).^[13]

On 11 December 2009, private respondent Antonio executed the Receipt and Release^[14] in which he acknowledged receipt of Php 50,107.52 as full and final settlement of his illness allowance.

On 13 May 2010, private respondent Antonio filed the Complaint^[15] with the Labor Arbiter against petitioners Solpia, Marine, and individual respondent Arturo J. Delgado Jr. The Complaint prayed for: permanent disability benefits, sick wages for 25 days, moral and exemplary damages, attorney's fees, and other benefits provided by law.

Private respondent Antonio alleged in his Position Paper^[16] before the Labor Arbiter: private respondent Antonio is entitled to permanent disability benefits because he became permanently unfit for work due to the severe injury in his spinal column, and his disability lasted for more than 120 days; based on the 15 October 2009 medical report (re: the medical treatment he received in Indonesia), private respondent Antonio has "*LBP e.c. Spondylosis of Lumbar Spine; Multiple Gall Bladder Stone; Fatty Liver;*" the 20 October 2009 X-ray results of private respondent Antonio show that he was diagnosed with "*Lumbar spondylosis, Schmorl's nodes, Inferior L4 and L5 End Plates;*" private respondent Antonio's medical record from the Nazarene College Foundation Hospital reveals that he is suffering from "*Lumbar Spondylosis; R/O HNP L4, L5, L5-S1;*" conformably to the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), private respondent Antonio is entitled to permanent disability benefits of US\$ 60,000.00 and a maximum of 120 days sickness allowance equivalent to his basic wage; petitioner Solpia discontinued private respondent Antonio's medical expenses and treatment for a period of 25 days thus private Antonio is entitled to the balance of his sickness allowance for 25 days; due to the bad faith of petitioners in refusing to give private respondent Antonio's benefits under the law, petitioners are liable for moral and exemplary damages and attorney's fees.

Petitioners alleged in their Position Paper^[17] before the Labor Arbiter: individual respondent Arturo J. Delgado Jr. is no longer connected with petitioners Solpia and Marine; private respondent Antonio is not entitled to permanent disability benefits because he was twice declared to be fit to work by Dr. Amador and Dr. Hernandez within 120 days from his repatriation; under the POEA rules, private respondent Antonio should first prove that he suffered from an occupational disease to be compensable, however private respondent Antonio has not proved that "*lumbar spondylosis*" was work-related; petitioners Solpia and Marine already settled their obligation to private respondent Antonio when they reimbursed him of his medical expenses worth Php 54,807.52; petitioners' medical reimbursement to private respondent Antonio covered the period of 46 days from his repatriation to Manila until he was declared to be fit to work, thus private respondent Antonio is no longer entitled to balance of 25 days of his sick wages; private respondent Antonio executed the Receipt and Release and acknowledged that he received Php 50,107.52 as full and final settlement of his sickness allowance.

Private respondent Antonio alleged in the Reply^[18] before the Labor Arbiter: private respondent Antonio became permanently unfit to work as a seafarer because his spinal injury was not cured, and it worsened despite medical treatment of Dr. Amador and private respondent Antonio's independent medical orthopedic specialist, Dr. Jacinto; the diagnosis made on 3 December 2009 by the company-designated physician Dr. Hernandez, that private respondent Antonio was fit to work, was belied

by the more recent 14 December 2009 diagnosis by Dr. Amador; private respondent Antonio's medical certificate dated 14 December 2009 executed by Dr. Amador, showed that he was suffering from "*disability due to low back pain*;" Dr. Hernandez, as the company-designated physician, could not be expected to be a neutral and fair assessor of private respondent Antonio's medical condition.

Petitioners alleged in the Reply^[19] before the Labor Arbiter: private respondent Antonio's own physician found that private respondent Antonio was fit to work; under the POEA-SEC, if a physician appointed by the seafarer disagrees with the company-designated physician's assessment, the employer and the seafarer may agree to appoint a third physician, whose decision shall be final and binding on both parties; private respondent Antonio did not request for the appointment of a third physician.

Private respondent Antonio alleged in the Rejoinder^[20] before the Labor Arbiter: the medical assessments by Dr. Amador and Dr. Jacinto, both confirmed that private respondent Antonio became permanently unfit to perform his seafaring duties; the POEA-SEC does not exclusively provide that only the company-designated doctor could assess and treat the injured seafarer.

Petitioners alleged in the Rejoinder^[21] before the Labor Arbiter: private respondent Antonio lied when he alleged that Dr. Amador is the company-designated physician, because in his affidavit, private respondent Antonio admitted that he went to Dr. Amador on his own.

Petitioners also filed the Surrejoinder^[22] which reiterated their arguments in the previous pleadings.

On 27 January 2011, the Labor Arbiter issued the Decision.^[23] Its dispositive portion read:

IN VIEW OF THE FOREGOING, respondent agency is directed to pay the complainant of his disability benefit of SIXTY THOUSAND US DOLLARS (\$60,000.00). The rest of the claims are DISMISSED.

SO ORDERED.

The Decision of the Labor Arbiter ruled: private respondent Antonio's injury was compensable because the same was incurred on 14 October 2009 while he was in the performance of his duties; Dr. Jacinto's diagnosis that private respondent Antonio became permanently unfit, was more credible than the findings of the company-designated physician, Dr. Hernandez; petitioners paid private respondent Antonio his sickness allowance (*i.e.*, consultation fees, laboratory examinations, medicines, etc.,) as evidenced by the Receipt and Release; the Receipt and Release did not include permanent disability benefits, thus petitioners are still liable to pay private respondent Antonio US\$ 60,000.

Petitioners appealed to the NLRC.

Petitioners filed Memorandum of Appeal^[24] before the public respondent NLRC. Private respondent Antonio filed Opposition to Notice of Appeal (Motion to Dismiss Appeal).^[25]

On 6 June 2011, the NLRC issued the assailed Decision.^[26] The dispositive portion read:

WHEREFORE, premises considered, judgment is hereby rendered DENYING the appeal for lack of merit. The Decision dated January 27, 2011 rendered by Labor Arbiter Gaudencio P. Demaisip, Jr. is AFFIRMED.

SO ORDERED.

The assailed Decision affirmed the Labor Arbiter's findings that private respondent Antonio's sickness was work-related and thus compensable, and that the medical diagnosis of Dr. Jacinto was more accurate and reliable than the diagnosis of the company-designated physician, Dr. Hernandez.

Petitioners filed the Motion for Reconsideration^[27] before the NLRC. Private respondent Antonio filed Opposition (To Respondent's Motion for Reconsideration).^[28] On 30 December 2011, the NLRC issued the assailed Resolution which denied petitioners' Motion for Reconsideration.

Thus, this Petition for Certiorari under Rule 65, petitioners making the following assignment of errors:

I. THE DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

II. THE DECISION IS CONTRARY TO LAW.

The pivotal issue is whether the NLRC committed grave abuse of discretion when it affirmed the Labor Arbiter's findings that petitioners are liable for permanent disability benefits to private respondent Antonio.

THE PETITIONERS' ARGUMENTS

Petitioners answer in the affirmative. The NLRC committed grave abuse of discretion in affirming the award of private respondent Antonio's permanent disability benefits.

The Petition for Certiorari under Rule 65^[29] thrusts private respondent Antonio's evidence does not show that he is entitled to permanent disability benefits. Private respondent Antonio's physician Dr. Jacinto, and the company-designated physician Dr. Hernandez both certified that private respondent Antonio was fit to work within 120 days from private respondent Antonio's repatriation. Private respondent Antonio did not follow POEA-SEC and jurisprudence which provides that (a) only the company-designated physician can declare whether a seafarer is fit to work, or the degree of his disability; (b) the finding of the company-designated physician takes precedence over the seafarer's physician; (c) if the seafarer's physician disagrees with the finding of the Company physician, he should request for the appointment of a third physician whose ruling shall be final. The NLRC's exclusive reliance on the medical findings of Dr. Jacinto was erroneous because Dr. Jacinto was private respondent Antonio's personal physician, and is neither an independent physician, nor the company-designated physician.

Petitioners filed Memorandum^[30] reiterating the arguments in the Petition.

THE PRIVATE RESPONDENT'S ARGUMENTS