

## SPECIAL TWELFTH DIVISION

[ CA-G.R. SP No. 123941, May 28, 2014 ]

**PAL MARITIME CORPORATION AND/OR MANX OCEAN CREWING LIMITED AND/OR MR. MANUEL B. BAYOT, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND REYNALDO M. ZARAGOSA, RESPONDENTS.**

### D E C I S I O N

**PAREDES, J.:**

#### The Case

BEFORE US is a petition<sup>[1]</sup> for certiorari under Rule 65 of the Rules of Court assailing the: (1) Decision<sup>[2]</sup> dated September 30, 2011 of public respondent National Labor Relations Commission (NLRC) in LAC No. 07-000593-11 (OFW (M)-09-13840-10); and (2) Resolution<sup>[3]</sup> dated December 29, 2011, denying petitioners' motion for reconsideration.

#### THE ANTECEDENTS

The facts, as culled from the record<sup>[4]</sup>, are as follows:

Reynaldo M. Zaragosa (*Zaragosa*) was hired by PAL Maritime Corporation (*PMC*) as Chief Cook in behalf of its foreign principal, Manx Ocean Crewing Limited (*Manx Ocean*). The following terms and conditions appear in Zaragosa's Contract<sup>[5]</sup> of Employment, approved by the Philippine Overseas Employment Agency (*POEA*), dated November 27, 2009:

Duration of Contract	Eight (8) months
Position	Chief Cook
Basic Monthly Salary	US\$774.00
Sub Allowance	US\$152.00/month
Other Allowance	US\$31.00/month
Hours of Work	44 hours per week
Overtime	US\$576.00 Fixed Overtime

	US\$5.59/Hr in excess of 103 Hrs/Month
Vacation Leave with Pay	US\$206.00 Per Month
Point of Hire	Manila, Philippines

Zaragosa's employment contract has an overriding Collective Bargaining Agreement known as the Total Crew Cost Fleet Agreement<sup>[6]</sup> for German Beneficially Owned Flag of Convenience Ships between the International Transport Workers' Federation, London SEI 1PD (ITF) and Ocean Marine Management GmbH and Manx Ocean Crewing Limited (*briefly, the CBA*).

After he was declared fit to work, Zaragosa boarded the vessel M/V Manarias. On March 9, 2010, at around 8 o'clock in the morning, while anchored at Port Koper, Slovenia, he accidentally chopped off his left thumb while chopping a half frozen meat as the vessel was swaying and rolling due to waves caused by the inclement weather. Zaragosa was sent to the hospital where his left thumb was amputated<sup>[7]</sup>; and was, thereafter, recommended for repatriation. He was repatriated on March 12, 2010. He was referred to the Manila Doctors Hospital where an x-ray was conducted and the result revealed:

Bony and soft tissue amputation of the mid to distal segment of the distal phalanx of the 1<sup>st</sup> digit is evident.

Other visualized osseous structures and joint spaces are intact in these views<sup>[8]</sup>.

He was sent to the company-designated physician, Dr. Nicomedes G. Cruz (*Dr. Cruz*), who, on March 15, 2010, made the following diagnosis:

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On physical examination, the patient was noted to have dressed left thumb. There is slight pain noted. There is also limited range of motion noted. He will be referred to our orthopedic surgeon for further management. He was advised to continue his medications.

**DIAGNOSIS:**

Amputated distal phalanx, 1<sup>st</sup> digit left hand.

**RECOMMENDATION:**

**MEDICATION:**

Flucloxacillin every x7days

Etoricoxib 120BID x5days<sup>[9]</sup>

xxx (*Emphasis in original*)

In another medical report dated April 14, 2010, it was noted that Zaragosa had "good wound healing" and "no infection noted"<sup>[10]</sup>. He had further examinations on several occasions<sup>[11]</sup> and he was provided with the necessary treatment. Despite surgery and physiotherapy, Zaragosa continued to have limited flexibility and difficulty in grasping objects, and still continued experiencing pain and numbness in his amputated finger. In view of this predicament, and due to the failure of the company-designated physician to come up with an evaluation and assessment of his disability, Zaragosa consulted a private medical practitioner on July 24, 2010. Dr. Manuel Fidel M. Magtira (*Dr. Magtira*) thoroughly examined and assessed<sup>[12]</sup> Zaragosa's disability as partial and permanent with Grade 10 (20.15%) impediment based on the POEA Standard Employment Contract (*POEA SEC*)<sup>[13]</sup>, categorized as "Loss of grasping power for large objects between fingers and palm of one hand", hence, Dr. Magtira declared him permanently unfit in any capacity for further sea duty.

Zaragosa went back to Dr. Cruz on August 5, 2010. Contrary to the finding of Dr. Magtira, Dr. Cruz declared Zaragosa fit to work as he was able to do activities of daily living. Although declared fit to work, Dr. Cruz issued Zaragosa a disability grading of ½ of Grade 10, equivalent to loss of ½ thumb, thus:

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At present, there is good prehension and the left handgrip has been restored. There is no swelling noted. He is for application of bivalve splint to improve the hyperesthesia of the stump. The distal portion of the left thumb is absent.

He is now able to do activities of daily living.

Diagnosis

Amputation 1<sup>st</sup> distal phalanx, Left

Recommendation

He is FIT To WORK effective August 5, 2010.

POEA Schedule of Disability Grading: ½ of Grade 10 = ½ loss of one thumb<sup>14</sup>.

xxx

For such loss, Zaragosa was offered the sum of US\$10,000.00 pursuant to the schedule of disabilities under the CBA<sup>[16]</sup> computed at 8% of US\$125,000.00. He rejected the offer and claimed for total disability benefit of US\$250,000.00 under the CBA. Consequently, he filed a complaint<sup>[16]</sup> for disability benefits, illness allowance, reimbursement of transportation and medical expenses, damages and attorney's fees against PMC, its Vice-President and General Manager Manuel Bayot, and Manx Ocean (*collectively, the petitioners*).

Efforts to settle the dispute amicably during the mandatory conciliation conferences before the Labor Arbiter proved unsuccessful. After the submission of the parties' respective position papers<sup>[17]</sup>, replies<sup>[18]</sup> to position paper and rejoinder<sup>[19]</sup>, the

Labor Arbiter issued a Decision<sup>[20]</sup> on April 28, 2011 disposing of the case in this wise:

**WHEREFORE, a Decision is hereby rendered ordering Respondents jointly and severally to pay complainant total disability benefit in the amount of US\$125,000.00, plus 10% of the total award as and by way of attorney's fees.**

**SO ORDERED**<sup>[21]</sup>.

Both parties appealed<sup>[22]</sup> to the NLRC, assailing the Decision of the Labor Arbiter. On September 30, 2011, the NLRC issued the assailed Decision<sup>[23]</sup>, disposing of the appeals thus:

**WHEREFORE, THE FOREGOING CONSIDERED, judgment is hereby rendered dismissing the appeal of respondents (now, petitioners) for lack of merit and the decision appealed from is AFFIRMED.**

**SO ORDERED**<sup>[24]</sup>.

The subsequent motions<sup>[25]</sup> for reconsideration of the parties were denied by the NLRC in a Resolution<sup>26</sup> dated December 29, 2011; thus, the instant Petition, ascribing grave abuse of discretion on the part of the NLRC when it affirmed the decision of the Labor Arbiter, viz:

**I. THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE FIT TO WORK DECLARATION OF THE COMPANY PHYSICIAN. IT MUST BE EMPHASIZED THAT THE PRIVATE RESPONDENT SUFFERED A MERE PARTIAL AMPUTATION OF THE DISTAL PHALANX OF ONLY HIS LEFT THUMB. THE CONDITION CANNOT CLEARLY BE CONSIDERED TO HAVE RENDERED HIM INCAPACITATED TO RETURN TO WORK AS A COOK. MORE SO CONSIDERING THAT HIS LEFT HAND GRIP WAS ALREADY RESTORED TO NORMAL.**

**II. THE PUBLIC RESPONDENT COMMITTED REVERSIBLE ERROR IN AFFIRMING THE AWARD OF ATTORNEY'S FEES DESPITE ABSENCE OF ANY FINDINGS OF BAD FAITH OR MALICE ON THE PART OF PETITIONERS. IT MUST BE EMPHASIZED THAT ATTORNEY'S FEES ARE NOT CONVENIENTLY AWARDED JUST BECAUSE A PARTY WINS A SUIT. IT MUST BE SUPPORTED BY A FINDING OF BAD FAITH OR MALICE ON THE PART OF THE PARTY HELD LIABLE THEREFORE**<sup>[27]</sup>.

### **THE ISSUES**

In fine, the issues for Our consideration are: (a) whether or not it was error for the NLRC and Labor Arbiter to disregard the fit to work declaration of the company designated physician; and (b) whether or not the payment of attorney's fees was proper.

### **THE COURT'S RULING**

***The petition lacks merit.***

Petitioners claim that: it was error for the NLRC and Labor Arbiter to disregard the fit to work declaration of the company-designated physician<sup>[28]</sup>; the grant of disability benefits in the amount of US\$125,000.00 for a partially amputated left thumb as well as the award of 10% attorney's fees do not find justification in the facts and evidence as well as parties' governing agreements<sup>[29]</sup>; and no incapacity to work resulted in the impairment of his earning capacity<sup>[30]</sup>. They also aver that the manner of settling disputes should be according to the POEA-SEC<sup>[31]</sup> so an assessment from a third physician should be necessary<sup>[32]</sup>. We are not persuaded.

Nothing is more settled than the principle that a special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. Grave abuse of discretion, as contemplated by the Rules of Court, is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that is so patent and gross that it amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order<sup>[33]</sup>. The burden of proof is on the petitioner to show that the assailed decision and resolution was tainted with grave abuse of discretion. This, petitioners failed to do in the present case.

As a rule, the entitlement of seamen on overseas work to disability benefits is a matter governed not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment (*DOLE*), and the parties' Collective Bargaining Agreement bind the seaman and his employer to each other<sup>[34]</sup>.

Likewise, it is doctrinal that the findings of facts and conclusion of the labor arbiter are generally accorded not only great weight and respect but even clothed with finality and deemed binding as long as they are supported by substantial evidence, without any clear showing that such findings of fact, as affirmed by the NLRC, are bereft of substantiation<sup>[35]</sup>. The reason being that labor officials are deemed to have acquired expertise in matters within their respective jurisdictions<sup>[36]</sup>.

In the challenged Decision<sup>[37]</sup>, the NLRC affirmed the findings of the Labor Arbiter and stressed that the disability of an employee does not rest on the issue of whether or not he loses the use of any part of his body but the inability to work for more than 120 days, and that the reason for awarding disability benefits is not the loss of his thumb but the incapacity to work resulting in the impairment of his earning capacity<sup>[38]</sup>. *We agree with the NLRC.*

It has been the Supreme Court's consistent ruling that in disability compensation, 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<sup>[39]</sup>. In this case, while both parties are in agreement that the amputation of the part of the thumb of Zaragosa was due an injury sustained as a result of an accident while he was in the performance of his duties as Chief Cook of the vessel, petitioners did not agree to the claim of Zaragosa for total disability.