

## **EIGHTH DIVISION**

**[ CA-G.R. SP No. 133550, November 28, 2014 ]**

**PHILIPPINE TRANSMARINE CARRIERS, INC. AND/OR ROYAL CARIBBEAN CRUISES LTD., PETITIONERS, VS. JOEL MENDOZA, RESPONDENT.**

### **DECISION**

**LAMPAS PERALTA, J.:**

Before the Court is a petition for review under Rule 43, 1997 Rules of Civil Procedure, assailing the following Decision and Resolution of the Panel of Voluntary Arbitrators<sup>[1]</sup> in AC-305-NCMB-NCR-22-02-04-B entitled *In re: Voluntary Arbitration case by and between Joel Mendoza and Philippine Transmarine Carriers, Inc. and/or Royal Caribbean Cruises, Ltd.:*

- (1) Decision dated October 23, 2013<sup>[2]</sup> which ordered petitioners to pay, jointly and severally, respondent Joel Mendoza full permanent disability benefits in the amount of US\$85,000.00, "medical allowance/maintenance cure and payment" in the amount of US\$1,860.00, and attorney's fees equivalent to ten percent (10%) of the total monetary awards, and
- (2) Resolution dated December 23, 2013<sup>[3]</sup> which denied petitioners' motion for reconsideration of the Decision dated October 23, 2013.

### **THE ANTECEDENTS**

On August 9, 2011, petitioner Philippine Transmarine Carrier, Inc. on behalf of its principal, petitioner Royal Caribbean Cruises Ltd., hired respondent Joel Mendoza as FM Cleaner (Day/Night Cleaner) for the cruise ship "Voyager of the Seas" for a period of eight (8) months, with a monthly minimum salary of US\$534.00.<sup>[4]</sup> Respondent was declared "fit for sea duty" after the pre-employment medical examination (PEME).<sup>[5]</sup> Prior thereto, respondent was employed as seafarer by Norwegian Cruise Line through its agent CF Sharp Philippines, but was medically repatriated for pulmonary embolism secondary to protein deficiency.<sup>[6]</sup>

Respondent was deployed on December 2, 2011.<sup>[7]</sup> At the cruise ship, he was assigned to maintain the cleanliness of the public male restrooms from Deck 11 to 14. On February 13, 2012, while cleaning the floor of the Optix Teen Club male restroom, respondent accidentally slipped and fell on the floor. While his fall impacted his rear end heavily, it was only the following day that he felt pain and discomfort on his back and bottom down to his legs. Respondent reported his

condition to his supervisor on the third day as he could no longer sleep comfortably because the pain radiated to his back. Upon advise of his supervisor, respondent consulted the ship doctor and was given oral and intravenous drugs to relieve the pain. As the pain persisted, respondent requested that he be treated by a specialist.  
[8]

Initially, his request was denied.<sup>[9]</sup> Then, on February 28, 2012, he was referred to Mobay Hope Medial Centre in Falmouth, Jamaica. While the x-ray of the lumbar spine and and pelvis showed normal result, the orthopedic surgeon recommended magnetic resonance imaging (MRI) scan on respondent's lumbusacral spine and (L) ischial tuberosity to confirm the initial diagnosis that the latter was suffering from "ruptured L4/L5 disc and tear of hamstring muscles from ischial tuberosity."<sup>[10]</sup>

Respondent was repatriated on March 2, 2012 and arrived in Manila on March 5, 2012. Within three (3) days, he reported to petitioner Philippine Transmarine Carriers, Inc.<sup>[11]</sup>

Petitioner Philippine Transmarine Carriers, Inc. referred respondent to the company-designated physicians at Shiphealth, Inc. for medical care and treatment.<sup>[12]</sup> Corollary thereto, respondent received from petitioners the amount of US\$5,228.10<sup>[13]</sup> as medical allowance/maintenance and cure payments for the period March 3, 2012 to January 15, 2013.

On February 8, 2013, respondent filed with the National Conciliation and Mediation Board (NCMB) a complaint against petitioners<sup>[14]</sup> for payment of full permanent disability benefits, medical allowance/maintenance and cure payments, moral and exemplary damages, attorney's fees, litigation expenses and costs of suit.<sup>[15]</sup>

In the meantime, respondent consulted Dr. Renato P. Runas, a Fellow at the Philippine Orthopedic Association, Philippine College of Surgeons, and International College of Surgeons. An MRI of respondent's lumbar spine was conducted on April 19, 2013.<sup>[16]</sup> In a Medical Evaluation Report dated April 25, 2013, Dr. Runas concluded that respondent "is physically unfit for sea duty in whatever capacity with permanent disability." Thus:

"x x x                      x x x                      x x x

At present, he is still experiencing moderate to severe pain at the lower back radiating to the left lower extremity. Pain is more pronounced when sitting and also aggravated by standing and walking. Low back pain is triggered by coughing and exertion. Trunk flexion and extension is limited because of pain. Paravertebral muscle tenderness is noted. Straight Leg Raising rest is positive on the left. Deep tendon reflexes are normoactive. Motor Strength is 4/5 on the right lower extremity. He walks with antalgic gait.

Repeat MRI of the lumbar spine was done at BDM Center on April 11, 2013 which revealed the following: Posterior left paracentral disk protrusion, L4-5 with spinal canal stenosis, moderate bilateral neural

foraminal narrowing, and left lateral recess narrowing. Concomitant ligamentum flavum buckling, L4-5, contributing to spinal canal narrowing; Posterior disk protrusion, L5-S1, indenting the thecal sac and slightly narrowing bilateral neural foramina; Beginning disk desiccation changes, L4-5 and L5-S1; Lumbar straightening may be due to muscle spasm.

Seaman Mendoza is incapacitated as a result of a back injury sustained onboard. The persistent moderate to severe low back pain prevents him from doing his previous activities. The low back pain and sciatica is not relieved by physical therapy. Partial relieved the pain and discomfort is noted after treatment but recurs after only a short period. Walking even for short distances triggers pain at the lower back and right leg and needs rest to relieve the condition. Heavy physical exertion and lifting of heavy provisions and other supplies and cargos onboard is no longer allowed because it will aggravate the low back condition and may also cause more severe disc herniation. Back rigidity limits his ability to bend, pick up and carry objects from the floor. Prolonged sitting, standing and walking worsen the discomfort. He has also difficulty going up the stairs. He has lost his preinjury capacity status. Further physical therapy may not afford much improvement. He needs a complete modification of lifestyle to avoid further injury. He is physically unfit for sea duty in whatever capacity with permanent disability."<sup>[17]</sup>

As the conciliation process at the NCMB failed, both parties selected the Panel of Voluntary Arbitrators to hear the case.<sup>[18]</sup> During the mandatory conferences, petitioners manifested that the company-designated physician had already assessed respondent's medical condition, but they failed to present said assessment.<sup>[19]</sup> Petitioners insisted that under the POEA Contract, respondent was not entitled to disability benefits, and if at all, was only entitled to an amount corresponding to his disability grading.<sup>[20]</sup> For failure of the parties to amicably settle, the Panel of Voluntary Arbitrators required the submission of their respective position papers.

On October 23, 2013, the Panel of Voluntary Arbitrators rendered a Decision granting respondent's claim for full permanent disability compensation benefits, medical allowance/maintenance and cure payments and attorney's fees, but denied the claim for moral and exemplary damages. The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering herein respondent **PHILIPPINE TRANSMARINE CARRIERS, INC. and ROYAL CARIBBEAN CRUISES, LTD.** to jointly and severally pay complainant, JOEL MENDOZA the amount of **Eighty Five Thousand US Dollars (US\$85,000.00)** as full permanent disability benefits provided by the Collective Bargaining Agreement, or its peso equivalent at the time of actual payment; **One Thousand Eight Hundred Sixty US Dollars (US\$1,860.00)** by way of medical allowance/maintenance cure and payment; and **ten (10%) percent** of the total monetary award as and by way of attorney's fees.

All the other claims are denied.

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

Petitioners moved for reconsideration<sup>[22]</sup> of the aforesaid Decision, but the same was denied by the Panel of Voluntary Arbitrators in a Resolution dated December 23, 2013.<sup>[23]</sup>

Thereupon, petitioners file the present petition which is premised on the grounds that:

1. THE AWARD OF US\$75,000.00 IS ANCHORED UPON THE PROVISIONS OF AN ALLEGED CBA. IT MUST BE NOTED THAT NO FAITHFUL REPRODUCTION OF THE CBA FOR THE VESSEL WAS EVER PRESENTED IN THE CASE AT BAR. HENCE, IT WAS ERRONEOUS FOR THE HONORABLE PANEL OF VOLUNTARY ARBITRATORS TO USE THE PROVISIONS OF THE SAID CBA IN THE RESOLUTION OF THE CASE.

2. THE PANEL OF VOLUNTARY ARBITRATORS SERIOUSLY ERRED IN AWARDING FULL DISABILITY BENEFITS EQUIVALENT TO US\$75,000.00 AND MEDICAL ALLOWANCE SINCE RESPONDENT IS GUILTY OF FRAUDULENT CONCEALMENT.

A. THE RECORDS OF THE CASE AS WELL AS RESPONDENT'S OWN CATEGORICAL ADMISSION SHOWS THAT HE IS GUILTY OF CONCEALMENT.

B. THE PRESENTATION OF THE PEME DOCTOR TO REBUT THE SWORN AFFIDAVIT OF RESPONDENT IS UNNECESSARY IN THE CASE AT BAR. IT IS THEREFORE ERRONEOUS FOR THE HONORABLE PANEL OF VOLUNTARY ARBITRATORS TO BELIEVE RESPONDENT'S ALLEGATION JUST BECAUSE THE PEME DOCTOR WAS NOT PRESENTED.

C. CONCEALMENT OF A PREVIOUS MEDICAL CONDITION BARS THE CLAIM FOR DISABILITY BENEFITS. IT IS IMMATERIAL IF THE MEDICAL CONDITION CONCEALED IS THE CAUSE OF THE CURRENT DISABILITY. THE ACT OF CONCEALMENT BY ITSELF FORFEITS A SEAFARER'S RIGHT TO DISABILITY BENEFITS.

3. THERE IS NO OBLIGATION IMPOSED BY LAW OR CONTRACT UPON PETITIONERS TO UNILATERALLY FURNISH RESPONDENT HIS MEDICAL ASSESSMENT. HENCE, IT IS IMPROPER FOR THE PANEL OF VOLUNTARY ARBITRATORS TO IMPOSE SUCH OBLIGATION AND RULE THAT SEAFARER IS ENTITLED TO FULL DISABILITY BENEFITS DUE TO SUCH FAILURE.

4. ASSUMING ARGUENDO THAT RESPONDENT IS ENTITLED TO DISABILITY BENEFITS, THE PANEL OF VOLUNTARY ARBITRATORS ERRED IN AWARDING FULL DISABILITY EQUIVALENT TO US\$75,000.00. DISABILITIES SHOULD BE ASSESSED IN ACCORDANCE WITH THE SCHEDULE OF DISABILITY GRADING UNDER THE POEA CONTRACT.

5. THE HONORABLE PANEL OF VOLUNTARY ARBITRATORS GRAVELY ABUSED HIS DISCRETION AND COMMITTED SERIOUS ERROR IN HOLDING PETITIONERS LIABLE FOR ATTORNEY'S FEES. PETITIONERS DID NOT ACT IN BAD FAITH TOWARD RESPONDENT AS TO JUSTIFY THE AWARD OF ATTORNEY'S FEES.<sup>[24]</sup>

### **THE ISSUE**

Whether the Panel of Voluntary Arbitrators erred in awarding to respondent full permanent disability compensation benefits, medical allowance and attorney's fees.

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

In holding that respondent was entitled to full permanent disability benefits in the amount of US\$85,000.00, the Panel of Voluntary Arbitrators noted that (i) respondent's testimony that he informed the doctor during the PEME that he suffered from pulmonary embolism was credible and uncontroverted by failure of petitioners to present the PEME doctor or his affidavit; (ii) even if respondent concealed his previous medical condition, the same was immaterial because he was repatriated for a totally unrelated illness and was declared fit for sea duty by a clinic that provided complete PEME for seafarers; (iii) respondent was deemed informed of the disability grading only on June 13, 2013, or more than a year from his medical repatriation, because the medical assessment dated August 20, 2012 was appended only to petitioners' *Position Paper*; (iv) while in the medical assessment dated August 20, 2012 respondent was declared "maximally improved," up to January 15, 2013, or more than 240 days from his medical repatriation, he was still receiving medical allowance/maintenance and cure payments; (v) respondent did not abandon his medical treatment; (vi) while the company-designated physicians and respondent's personal doctor differed as to the disability grading, their assessment of respondent's medical condition were the same; and, (vii) while the company-designated physician assessed respondent as entitled only to disability grading of 8, they were not certain if respondent's condition would be resolved.<sup>[25]</sup>

Petitioners fault the Panel of Voluntary Arbitrators in so ruling. Allegedly, (i) "respondent's own admission categorically shows that he is guilty of fraudulent concealment,"<sup>[26]</sup> but the Panel of Voluntary Arbitrators "relied on the latter's [respondent's] demeanor during the testimony and out rightly concluded that seafarer is not guilty of fraudulent concealment;"<sup>[27]</sup> (ii) the Panel of Voluntary Arbitrators erred in believing respondent's alleged disclosure to the PEME doctor of his medical condition just because said doctor failed to refute the same;<sup>[28]</sup> (iii) under the Amended POEA Contract and the CBA, "it is not required that the cause of disability is the illness or medical condition concealed [as] the fact of concealment itself bar any right to disability benefits;"<sup>[29]</sup> (iv) the Panel of Voluntary Arbitrators erred in holding that "the belated notification to respondent on 13 June 2013 means that he was disabled for more than 240 days"<sup>[30]</sup> since "there is no obligation imposed by law or contract upon petitioner to unilaterally furnish respondent his medical assessment;"<sup>[31]</sup> (v) assuming "that respondent is entitled to disabilities,