

SIXTH DIVISION

[CA-G.R. SP NO. 121889, November 12, 2014]

**JOSE G. DONGON, PETITIONER, VS. NATIONAL LABOR
RELATIONS PROMULGATED: COMMISSION, Y.K. MARITIME AND
AGENCY, INC. AND/OR SEYEONG MARINE CO., LTD. KOREA
AND/OR IMPARCIAL O. TEODORO, RESPONDENTS.**

DECISION

TIJAM, J.:

This Petition for Certiorari seeks to nullify and set aside the Decision^[1] dated June 22, 2011 of the National Labor Relations Commission [NLRC] holding private respondents liable for partial permanent disability benefits of US\$5,225.00 to petitioner, thereby vacating the Labor Arbiter's Decision^[2] dated November 10, 2010 which awarded permanent and total disability benefits of US\$60,000.00 and ten percent (10%) thereof as attorney's fees to petitioner. Also assailed is the NLRC's Resolution^[3] dated August 31, 2011 which denied petitioner's motion for reconsideration.

Culled from the records are the following facts:

The instant controversy arose from a Complaint^[4] for permanent and total disability benefits, sickness allowance, reimbursement of medical expenses, damages and attorney's fees filed on February 9, 2010 by petitioner against private respondents Y.K. Maritime and Agency, Inc. [*Y.K. Maritime, for brevity*], Seyeong Marine Co., Ltd/Korea [*Seyeong Marine, for brevity*] and Imparcial O. Teodoro before the Arbitration Branch of the NLRC.

On July 28, 2009, petitioner was hired by Y.K. Maritime, the manning agent of Seyeong Marine, as Wiper^[5] for a duration of nine (9) months, with basic monthly salary of US\$415.00, on board M/V Washington.^[6]

Prior to petitioner's deployment on August 29, 2009, he was declared fit for employment by the company-designated physician. On August 30, 2009, he joined M/V Washington.

On October 22, 2009, while the vessel was on its way to New Bedford, USA, petitioner suffered abdominal pain, loose bowel movement and vomiting. His condition worsen as he suffered cough and difficulty of breathing.

On October 30, 2009, petitioner was examined at the Southcoast Hospital and was initially diagnosed with Asthma and Abdominal Pain caused by Acute Pancreatitis. Due to his precarious medical condition, Dr. Fuerman David, the examining physician, recommended his repatriation to the Philippines for further medical

treatment.^[7]

On November 3, 2009, petitioner arrived in the Philippines and on the same day, he reported to Y.K. Maritime which referred him to the company-designated physicians at the Metropolitan Medical Center for post-employment medical examination.

After a series of laboratory tests, the company-designated physician, Dr. Robert D. Lim, [Dr. Lim] initially diagnosed petitioner of "Mild asthma, H. pylori Infection and Fatty Liver."^[8] Dr. Lim prescribed medication to petitioner and supervised his treatment.

On November 19, 2009, Dr. Karen Frances Hao-Quan, another company-designated physician, issued a Brief Clinical History and Medical Certificate stating that petitioner has undergone medical evaluation and treatment from November 4-19, 2009 and diagnosed to be suffering from "Mild asthma, H. pylori Infection and Fatty Liver".^[9]

On February 3, 2010, the company-designated physicians issued a medical assessment that petitioner suffered a Grade 12 Disability.^[10]

Petitioner underwent a Pulmonary Function Test^[11] at the Heart and Lung Diagnostic Clinic which showed that he had "poorly formed flow-volume loop indicative of severe chest restriction."

On May 31, 2010, petitioner's private physician, Dr. May S. Donato-Tan, a specialist in Internal Medicine and Cardiology, diagnosed petitioner to be suffering from the same ailments, "H. pylori Infection, Fatty Liver and Mild Bronchial Asthma" and declared him permanently disabled and unfit for duty in whatever capacity as a seaman.^[12]

To bolster his claim for permanent and total disability benefits, petitioner alleged that his illness was work related or he incurred it during the term of his employment with private respondents considering the factors present in his job as a wiper. He claimed that despite medication, he remained unfit to return to his work for more than 120 days from the time of his repatriation. He also claimed that from the onset of his medical treatment up to the present, he has not been declared fit to work by the company-designated physician. He explained that his inability to work for more than 120 days entitled him to permanent and total disability benefit. In fact, more than 7 months had elapsed from the time of his repatriation but still he could not perform his job as a wiper, and his doctor even declared him unfit for sea duty in whatever capacity.

Petitioner further averred that private respondents acted in bad faith when they unjustifiably refused to pay him permanent and total disability benefits under the JSU-AMOSUP CBA, sickness allowance and medical expenses in violation of the POEA Standard Employment Contract. He likewise claimed that he suffered physical pain, mental anguish, sleepless nights and wounded feelings by reason of the continuing refusal of the private respondents to settle his monetary claims, and that he was compelled to secure the services of counsel where he incurred litigation expenses and attorney's fees.

Refuting the claim for full compensation benefit under the POEA-SEC, private respondents argued that the opinion of Dr. Lim, the company-designated physician, is determinative of petitioner's entitlement to disability benefits. They stressed that petitioner was assessed by Dr. Lim to be suffering from a Grade 12 Disability, equivalent to US\$5,225.00, hence, said assessment should be given credence. Private respondents contended that petitioner had been paid his sickness allowance and that his claim for reimbursement of medical expenses must be denied since the same had been directly settled by them with Marine Medical Services of the Metropolitan Medical Center. They also contended that the medical expenses petitioner incurred in other hospitals, without their consent, were not reimbursable. Private respondents further claimed that during the mandatory conference, they offered to pay petitioner the amount of US\$5,225.00 for a Grade 12 Disability but he rejected the same.

On November 10, 2010, the Labor Arbiter rendered a Decision declaring that petitioner was permanently and totally disabled to perform his work as seaman as his ailments had not been addressed even after the lapse of 210 days from the time he was initially diagnosed by the company-designated physician until his private physician assessed him as unfit to work. The Labor Arbiter expounded that prior to petitioner's deployment, he was not suffering from any illness, and while on board M/V Washington, he was made to perform a tedious work, which sired his ailments. In awarding full disability benefits to petitioner, the Labor Arbiter gave due credence to the medical report of petitioner's private doctor that he was permanently disabled and not fit to work in whatever capacity as seaman. On top of the disability benefits, the Labor Arbiter awarded 10% thereof as attorney's fees, but denied the other monetary claims for lack of basis, thus –

"WHEREFORE, judgment is hereby made ordering the respondents-companies to pay complainant US\$60,000.00 as permanent disability compensation, plus ten (10%) as attorney's fees.

Other claims are dismissed for lack of merit.

SO ORDERED.^[13]

Not satisfied with the Labor Arbiter's decision, private respondents brought the case on appeal to the NLRC contending that the company-designated physician assessed petitioner with a Grade 12 Disability which is equivalent to only US\$5,225.00 under the POEA-SEC; and that petitioner's inability to work for more than 120 days is not a justification to declare him permanently disabled.

In its assailed Decision dated June 22, 2011, the NLRC gave due credence to the medical assessment of the company-designated physician that petitioner was only entitled to a Grade 12 Impediment or to US\$5,225.00.^[14] The NLRC emphasized that petitioner was given full medical attention from the time of his repatriation up to the time that his disability was assessed by the company-designated physician. The company-designated physician's Grade 12 Impediment was issued even before the lapse of the 240-day period whereby an employer may declare that a partial permanent disability already exists. On the other hand, the NLRC stressed that the certification of petitioner's private doctor merely stated that he was unfit to work but

there was no evidence to support that his incapacity was permanent and total. The NLRC disposed of the case as follows:

"WHEREFORE, premises considered, the decision appealed from is **VACATED** and **SET ASIDE**. Respondents Y.K. Maritime and Agency Inc., and/or Seyeong Marine Co. Ltd. Korea are ordered to pay complainant Jose Dongon the Philippine Peso equivalent at the time of actual payment of FIVE THOUSAND TWO HUNDRED TWENTY-FIVE DOLLARS (US\$5,225.00) as partial permanent disability benefits.

SO ORDERED."^[15]

Petitioner's motion for reconsideration of the above decision was denied by the NLRC in its Resolution^[16] dated August 31, 2011 for lack of merit.

Hence, the present recourse imputing grave abuse of discretion to the NLRC, to wit:

1. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT IT IS ONLY THE COMPANY-DESIGNATED PHYSICIAN WHO CAN PROCLAIM THAT THE SEAMAN SUFFERED PERMANENT DISABILITY, WHETHER TOTAL OR PARTIAL.
2. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING UNDUE CREDENCE TO THE INCONCLUSIVE "GRADE 12" ASSESSMENT OF THE COMPANY-PAID PHYSICIAN.
3. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE UNDISPUTED FACT THAT SEAMAN DONGON REMAINED UNFIT TO WORK AS CERTIFIED BY THE INDEPENDENT PHYSICIAN FOR MORE THAN 120 DAYS AND HIS CONTINUING INABILITY TO PURSUE HIS USUAL WORK AND EARN THEREFROM CONSTITUTES PERMANENT AND TOTAL DISABILITY.
4. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT A SEAMAN'S DISABILITY IS NOT MEASURED IN TERMS OF THE 120-DAY DISABILITY RULE BUT BY GRADINGS ONLY.
5. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN NOT HOLDING THAT THE GRADE 12 ASSESSMENT OF THE COMPANY PHYSICIAN CANNOT PREVAIL OVER THE FACT THAT SEAMAN DONGON IS UNABLE TO RETURN TO HIS WORK BECAUSE OF A DISABILITY FOR MORE THAN 120 DAYS.
6. THE NLRC ACTED WHIMSICALLY, CAPRICIOUSLY AND DESPOTICALLY IN REVERSING THE LABOR ARBITER'S DECISION (AWARDING PETITIONER'S CLAIMS FOR

PERMANENT TOTAL DISABILITY BENEFITS AND ATTORNEY'S FEES) WHICH IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS IN FULL ACCORD WITH JURISPRUDENCE AND THE CONSTITUTIONAL MANDATE OF AFFORDING FULL PROTECTION TO LABOR, ESPECIALLY THOSE WORKING OVERSEAS.

The issues for resolution are:

1) Whether petitioner was permanently and totally disabled as declared by his private doctor, or merely suffered a Grade 12 Impediment as assessed by the company-designated physician;

2) Whether the inability of the petitioner to work for more than 120 days from the time of his repatriation constitutes permanent and total disability; and

2) Whether petitioner is entitled to attorney's fees.

The petition is bereft of merit.

The first and second issues being interrelated, We shall discuss them simultaneously.

The POEA-SEC mandates that a claim for disability benefit for a work-related illness or injury be supported by a post-employment medical report conducted by the company-designated physician, to wit:

Section 20 (B). Compensation and Benefits for Injury or Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

xxx xxx xxx

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed