

SPECIAL THIRTEENTH DIVISION

[CA-G.R. SP No. 136582, November 05, 2014]

**MICHAELMAR PHILS., INC., SEA JUSTICE SA AND/OR MA.
MERCEDES M. °RAVANOPOULOS, PETITIONERS, VS. NATIONAL
LABOR RELATIONS COMMISSION (SIXTH DIVISION) AND
ADRIAN L. EDAY, RESPONDENTS.**

DECISION

DIAMANTE, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court assailing the April 21, 2014 Decision^[1] and the May 30, 2014 Resolution^[2] of the National Labor Relations Commission, Sixth Division (hereinafter referred to as NLRC) in LAC No. OFW-M-01-000123-14 [NCR-OFW-M-05-07546-13] which affirmed the January 6, 2014 Decision^[3] of the Labor Arbiter.

The antecedent facts of the case are as follows:

In his October 17, 2013 Position Paper,^[4] private respondent Adrian Lumawag Eday asseverated his entitlement for total and permanent disability benefits to be imposed against herein petitioners, an excerpt of the same is hereby reproduced, viz:

"xxx xxx

Complainant [herein private respondent] signed a contract of employment with respondents [herein petitioners] on 24 October [2012]^[5] to work as "ABLE SEAMAN" on board the vessel "M/V INDIA." The said employment contract provides, among others, the following relevant terms and conditions, to wit:

xxx xxx

Before he joined the vessel, complainant underwent the required Pre-Embarkation Medical Examination (PEME) and was declared fit for sea duty by respondents' company-designated clinic. Upon joining the vessel, he thereafter more than fully and ably discharged his duties and responsibilities expected of him until he was repatriated on 26 January 2013 for medical reason.

On 08 January 2013, while the vessel M/V INDIA was en route to Santos, Brazil, complainant was tasked to clean DBT 3 port side rose plate cover. The steel plate was in perpendicular position as complainant was in progress [of] cleaning it. Unfortunately, the steel plate accidentally

slipped from its position which complainant tried to prevent from falling but was too heavy to hold it that it crushed his left hand. He was immediately rescued by his colleagues and was given first aid treatment.

After five (5) days, the vessel reached the coast of Cape Town and a rescue helicopter brought complainant to the nearest hospital for medical treatment. After medical examination, he was found to have suffered multiple fractures in his hand due to the accident. Complainant underwent surgery of his left hand where the fracture was fixed with plating and screws. After the surgery, complainant stayed in the hospital for twelve (12) more days. Due to his injury, the attending surgeon advised him it would take a year before the plating can be removed but he could no longer use his injured hand for heavy activity. He was then declared unfit for sea duty and was repatriated to the Philippines on 26 January 2013.

On 28 January 2013, immediately after his arrival, complainant was referred to respondents' company-designated physician at YGEIA Medical Center, Inc. Follow up medical check ups were scheduled on 04 February 2013 and 11 February 2013. Upon examination, complainant was advised to undergo physical therapy for ten (10) to fourteen (14) sessions.

Unfortunately, even after the surgery, complainant could not move his hand without experiencing pain. He noticed to have lost his grip. He then inquired from the company-designated physician whether the loss of his grip is temporary. He further inquired whether he could still use his injured hand for work as seafarer since the surgeon in Cape Town informed him otherwise. Despite his questions, the company-designated physician refused his query and told him to just wait for instructions from respondents.

As his family was also curious as to his future, complainant was referred by his family to seek [consultation] and evaluation from an independent medical report, Dr. Manuel Fidel M. Magtira, M.D., who after a series of evaluation and tests, declared complainant permanently unfit for sea duties, xxx xxx.

After 3 check ups, complainant requested from respondents reimbursements of his medical expenses as he was suffering from financial difficulty. He also sought assistance for his physical therapy. Despite complainant's request, respondents refused to reimburse his medical expenses and denied complainant of assistance for continued therapy. Complainant then asked respondents for his sickness allowance but respondents refused. After several and persistent demands, respondents deliberately ignored complainant's plea. Thus, complainant was forced to file his complaint for nonpayment of sickness allowance. Mandatory conciliation hearings were made and respondents were forced to settle his sickness allowance claim.

However, irked by complainant's filing of a labor complaint to demand payment of his sickness allowance, respondents prematurely terminated the medical treatment and therapy they provide him, even despite his

protestation as his injuries were still unresolved, to no avail. Again, complainant requested respondents to continue their medical accommodation of his injury but they continuously refused. Meanwhile, complainant went back to his own medical expert for further evaluation of his medical condition on his left hand but he was given the same evaluation of total permanent disability.

Thus, complainant was forced to amend his complaint to include total permanent disability benefit and attorney's fees."

For their part, petitioners countered that private respondent is not entitled to total permanent disability benefits considering that both the attending physicians abroad and the medical center where private respondent was referred to upon repatriation had issued similar findings enunciating therein that the latter would still recover from his injury with continuous treatment and physical therapy. Petitioners further asseverated that private respondent's condition was assessed as disability Grade-10 in the medical report and such assessment was made on the 116th day counted from the time of repatriation, which was well-within the 240-day period prescribed by law for any declaration of either fitness to work of the seafarer or his permanent disability.

On January 6, 2014, the Labor Arbiter rendered a judgment sustaining the claim for total permanent disability benefits. Upon appeal, the NLRC rendered a Decision affirming the ruling of the Labor Arbiter. Thereafter, the NLRC likewise denied petitioners' motion for reconsideration. In view of the foregoing, herein petitioners come before this Court *via* a special action of certiorari assailing the decision of public respondent NLRC.

The petition is unmeritorious.

Now, this Court shall determine whether private respondent is entitled to be awarded permanent total disability benefits. We hold in the affirmative.

In the case at bench, We find that public respondent NLRC did not err in sustaining the award of total permanent disability benefits. Petitioners' contention that private respondent was not entitled to permanent total disability benefits inasmuch as his condition was only assessed as disability Grade-10 and such assessment was made on the 116th day counted from the time of repatriation, which was well-within the 240-day period prescribed by law, does not hold water. As expressly stated in the medical report issued by YGEIA Medical Center, Inc., the assessment is merely interim.^[6] It was further declared therein that private respondent would need to undergo further treatment of four(4)-six(6) months of physical therapy sessions. Furthermore, there was no specific stipulation in the aforesaid medical report that private respondent is fit for sea duties.

In *Quitoriano vs. Jebsens Maritime, Inc., et al.*,^[7] the Supreme Court has emphatically espoused that disability should be understood less on its medical significance but more on the loss of earning capacity, and We quote, thus: