



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ACE NAVIGATION COMPANY and VELA INTERNATIONAL MARINE LIMITED,

Petitioners,

- versus -

SANTOS D. GARCIA,
 Respondent.

G.R. No. 207804

Present:

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, JJ.

Promulgated:
JUN 17 2015

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated December 14, 2012 and the Resolution³ dated June 19, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123272, which reversed and set aside the Decision⁴ dated October 24, 2011 and the Resolution⁵ dated December 12, 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-000688-11 and, accordingly, ordered petitioners Ace Navigation Company (Ace Navigation) and Vela International Marine Limited (Vela International; collectively, petitioners) to jointly and severally pay respondent Santos D. Garcia (Garcia) total and permanent disability benefits in the amount of US\$80,000.00 and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.

¹ *Rollo*, pp. 31-61.

² *Id.* at 13-26. Penned by Associate Justice Danton Q. Bueser with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

³ *Id.* at 28-29.

⁴ *CA rollo*, pp. 29-39. Penned by Commissioner Napoleon Menese with Presiding Commissioner Raul T. Aquino concurring, and Commissioner Teresita D. Castillon-Lora dissenting.

⁵ *Id.* at 43-44. Penned by Commissioner Napoleon M. Menese with Presiding Commissioner Raul T. Aquino concurring. Commissioner Teresita D. Castillon-Lora took no part.

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The Facts

On November 3, 2009, Ace Navigation hired Garcia to work as a fitter for the vessel M/T Capricorn Star, owned by Vela International, for a period of eight (8) months, with a basic monthly salary of US\$850.00, guaranteed overtime pay of US\$475.07, and vacation leave pay of US\$223.56.⁶ As a registered member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), Garcia's employment was covered by a Collective Bargaining Agreement⁷ executed between petitioners and AMOSUP (VELA-AMOSUP CBA). Pursuant to the employment contract,⁸ Garcia boarded Vela International's vessel, M/T Capricorn Star on November 11, 2009.⁹

On February 9, 2010, Garcia claimed that while doing grinding work, he slipped and fell, causing pain in his right arm, shoulder, and chest.¹⁰ As his condition persisted, he requested his superior for a medical check-up at the nearest port of call.¹¹ Upon arrival of the vessel in Venezuela on May 17, 2010, Garcia underwent a medical consultation¹² where he was diagnosed with "Contracture Muscular Abnormality" and was recommended to be repatriated. Thus, on May 20, 2010, Garcia was repatriated back to the Philippines.¹³

Following Garcia's repatriation, he was initially diagnosed¹⁴ by company-designated physician Dr. Susannah Ong-Salvador (Dr. Salvador) to be suffering from a work-related bilateral shoulder strain/sprain and a non-work-related ganglion cyst on his right wrist, as well as an incidental finding of *ureterolithiasis*.¹⁵ Garcia also underwent numerous magnetic resonance imaging examinations where it was discovered that he was suffering from bulges on his spine. Thus, through numerous medical consultations with the company-designated physician, Garcia received treatment for his medical condition that resulted from his accident, as well as for his subsequently-diagnosed kidney ailment.¹⁶

Sometime in November 2010, Garcia received medical treatment from another company-designated physician, Dr. Nicomedes Cruz (Dr. Cruz), for the persistent pain he was experiencing on his shoulder and posterior

⁶ See Contract of Employment dated November 3, 2009; *id.* at 227.

⁷ *Id.* at 228-261.

⁸ *Id.* at 227.

⁹ *Rollo*, pp. 14-15.

¹⁰ *Id.* at 17. See also *CA rollo*, p. 312.

¹¹ *CA rollo*, p. 312

¹² See Shore Medical Treatment; *CA rollo*, p. 189.

¹³ *Rollo*, p. 15; *CA rollo*, p. 312.

¹⁴ See Initial Medical Report dated May 24, 2010; *CA rollo*, pp. 263-264.

¹⁵ *CA rollo*, p. 31. See also *rollo*, p. 15.

¹⁶ *Rollo*, pp. at 15-16.

cervical spine. Garcia was then advised to undergo operation to remove a disc in his spine, which he refused.¹⁷

On November 8, 2010, Garcia filed a claim¹⁸ for total and permanent disability benefits against petitioners before the NLRC,¹⁹ docketed as NLRC NCR (M)-11-15744-10. In support of his position, Garcia averred that he consulted an independent physician, Dr. Nicanor F. Escutin (Dr. Escutin), who diagnosed him with a work-related total and permanent injury on his cervical spine, rendering him unfit to be a seaman in whatever capacity.²⁰

In their defense, petitioners asserted that Garcia's illnesses, *i.e.*, ganglion cyst and *nephrolithiasis*, are not work-related, and he was already declared fit to work on October 28, 2010 by his urologist.²¹ While petitioners admitted that Garcia continued to suffer pain on his right shoulder which necessitated continuous physical therapy sessions and medication, they nevertheless rejected Garcia's claim for total disability.²² In this relation, petitioners pointed out that on January 12, 2011, Dr. Cruz already recommended that Garcia be accorded disability rating of "Grade 10 – Moderate stiffness or two-thirds ($\frac{2}{3}$) loss of motion of the neck, based on the [Philippine Overseas Employment Administration (POEA)] Schedule of Disability Grading."²³ Lastly, petitioners maintained that the aforesaid findings of the company-designated physician should be accorded utmost respect and consideration.²⁴

The LA Ruling

In a Decision²⁵ dated June 28, 2011, the Labor Arbiter (LA) ruled in Garcia's favor, and accordingly, ordered petitioners to jointly and severally pay him permanent total disability benefits in the amount of US\$80,000.00 and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of payment.²⁶

The LA found that Garcia is entitled to permanent total disability benefits given that his physical condition prevented him from resuming his trade as a seaman since his repatriation on May 20, 2010 until the present, or for a period of more than 120 days.²⁷ The LA gave credence to the findings of the independent physician, Dr. Escutin, over that of the company-

¹⁷ Id. at 16-17.

¹⁸ See Complaint; CA *rollo*, pp. 46-47.

¹⁹ *Rollo*, p. 17.

²⁰ See Disability Report dated April 25, 2011; CA *rollo*, pp. 193-194. See also *rollo*, p. 17.

²¹ CA *rollo*, p. 203.

²² *Rollo*, p. 18.

²³ CA *rollo*, p. 289. See also petitioners Position Paper *Ex Abundante Ad Cautelam* filed on April 14, 2011; *id.* at 208.

²⁴ *Rollo*, p. 18; CA *rollo*, p. 209.

²⁵ CA *rollo*, pp. 311-321. Penned by Labor Arbiter Enrique L. Flores, Jr.

²⁶ *Id.* at 320.

²⁷ *Id.*

designated physician, Dr. Cruz, opining that the assessment and declarations of a company-designated physician should not prejudice Garcia's claim for disability benefits, considering that a seafarer may resort to other equally competent medical professionals to prove the nature of his injury.²⁸ Lastly, the LA granted Garcia's claim for attorney's fees since he was forced to litigate and incur expenses for the protection of his rights and interests.²⁹

Dissatisfied, petitioners appealed³⁰ to the NLRC, which was docketed as NLRC LAC No. 08-000688-11.

The NLRC Ruling

In a Decision³¹ dated October 24, 2011, the NLRC granted the appeal, and thereby, decreased the award of Garcia's disability benefits to US\$10,075.00 and deleted the award of attorney's fees in his favor.³²

Contrary to the findings of the LA, the NLRC found that since the company-designated physician, Dr. Cruz, assessed Garcia with a Grade 10 disability rating and that no other disability rating appears on record, Garcia was, thus, bound thereto.³³ As such, he is only entitled to the aforesaid amount pursuant to the VELA-AMOSUP CBA, which is the prevailing law between petitioners and Garcia.³⁴ The NLRC discredited the declaration of the independent physician, Dr. Escutin, that Garcia was permanently unfit for sea duty given that his disability report did not show that he conducted independent tests to verify his physical condition, but merely based his review on the medical findings of petitioners' designated physicians.³⁵ Finally, the NLRC deleted the award of attorney's fees since petitioners acted within their rights in denying Garcia's claim for permanent total disability benefits.³⁶

Garcia moved for reconsideration³⁷ which the NLRC denied in a Resolution³⁸ dated December 12, 2011. Aggrieved, he filed a petition for *certiorari*³⁹ before the CA.

²⁸ Id. at 317-318.

²⁹ Id. at 320.

³⁰ See Notice of Appeal with Memorandum of Appeal filed on July 25, 2011; id. at 322-343.

³¹ Id. at 29-39.

³² Id. at 38-39.

³³ Id. at 36.

³⁴ Id. at 34-35.

³⁵ To note, Garcia was attended to by company-designated physicians, Dr. Salvador and Dr. Cruz. Id. at 37.

³⁶ Id. at 38.

³⁷ Not attached to the records of the case.

³⁸ CA *rollo*, pp. 43-44.

³⁹ Id. at 5-26.

The CA Ruling

In a Decision⁴⁰ dated December 14, 2012, the CA reversed and set aside the ruling of the NLRC, and accordingly, reinstated that of the LA.⁴¹ The CA agreed with the LA that Garcia's inability to perform any gainful employment for a continuous period of 120 days from his repatriation rendered his disability total and permanent, and thus, Garcia should be entitled to the award of disability benefits in the amount of US\$80,000.00, as stated in the VELA-AMOSUP CBA.⁴²

Undaunted, petitioners sought for reconsideration,⁴³ which was, however, denied in a Resolution⁴⁴ dated June 19, 2013; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly declared Garcia to be entitled to permanent total disability benefits.

The Court's Ruling

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.⁴⁵

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In a seafarer's claim for disability, the *onus probandi* falls on the seafarer to establish his claim for disability benefits by the requisite quantum of evidence to justify the relief sought.⁴⁶

⁴⁰ *Rollo*, pp. 13-26.

⁴¹ *Id.* at 26.

⁴² See *id.* at 24-25.

⁴³ See Motion for Reconsideration filed on January 7, 2013; *id.* at 78-112.

⁴⁴ *Id.* at 28-29.

⁴⁵ See *Bahia Shipping Services, Inc. v. Hipe, Jr.*, G.R. No. 204699, November 12, 2014, citing *Ayungo v. Beamko Shipmanagement Corporation*, G.R. No. 203161, February 26, 2014.

⁴⁶ See *id.*; citations omitted.

Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC in ruling that Garcia is not entitled to total and permanent disability benefits, considering that the same is supported by substantial evidence and in accord with prevailing law and jurisprudence, as will be explained hereunder.

A judicious review of the records reveals that Garcia was indeed unable to obtain any gainful employment for more than 120 days after his repatriation; however, this fact does not *ipso facto* render his disability total and permanent. In *Vergara v. Hammonia Maritime Services, Inc.*,⁴⁷ the Court held that the company-designated physician is given a leeway of an additional 120 days, or a total of 240 days from repatriation, to give the seafarer further treatment and, thereafter, make a declaration as to the nature of the latter's disability. Thus, it is only upon the lapse of 240 days, or when so declared by the company-designated physician, that a seafarer may be deemed totally and permanently disabled, *viz.*:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract [(SEC)] and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.**

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As we outlined above, **a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.** In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work.⁴⁸ (Emphases and underscoring supplied)

⁴⁷ 588 Phil. 895 (2008).

⁴⁸ Id. at 912-913; citations omitted.

It is undisputed that Garcia was repatriated on **May 20, 2010** and was immediately subjected to medical treatment. Despite the lapse of the initial 120-day period on **September 17, 2010**, such treatment continued and in fact, on **January 12, 2011** – or **237 days** from Garcia’s repatriation – the company-designated physician, Dr. Cruz, declared that the former suffers from a disability rating of “Grade 10 – Moderate stiffness or two-thirds ($\frac{2}{3}$) loss of motion of the neck, based on the POEA Schedule of Disability Grading”⁴⁹ and not from a permanent and total disability. Thus, pursuant to the provisions of the VELA-AMOSUP CBA, as supplemented by the POEA-SEC, Garcia is only entitled to a rate of compensation for an impediment with a Grade 10 rating in the amount of US\$10,075.00.⁵⁰

In this relation, the NLRC correctly relied on the findings of the company-designated physicians (Dr. Salvador and Dr. Cruz) despite the contrary findings of the independent physician (Dr. Escutin). It is well to note that Article 21.7 of the VELA-AMOSUP CBA specifically provides for a conflict-resolution procedure in cases of disagreement between the company-designated physician and the seafarer’s independent physician, *viz.*:

- 21.7. The percentage degree of disability the COMPANY shall be liable for shall be determined by a competent medical doctor appointed by the COMPANY. **In the event a medical doctor appointed by the Seaman and the UNION disagree with the percentage degree of disability determined by the COMPANY appointed doctor, a third medical doctor shall be agreed upon by the UNION and the COMPANY to provide an independent determination of the percentage degree of disability. No other Party or Group shall be authorized to seek or provide input regarding the percentage degree of disability, but such designation shall be established by a competent medical professional which the Parties shall mutually and exclusively select in good faith.** In such event, the parties shall accept the findings of the third doctor regarding the percentage degree of disability of the Seaman.⁵¹ (Emphasis and underscoring supplied)

It is clear from the foregoing CBA stipulation that should there be a discrepancy between the findings of the company-designated physician and the seafarer’s independent physician, it is necessary to appoint a third physician whose findings shall be controlling. The use of the word “shall” in said stipulation indicates the mandatory nature of such requirement.⁵² More so, the CBA is the law between the parties, hence they are obliged to comply with its provisions.⁵³

⁴⁹ CA rollo, p. 289.

⁵⁰ Id. at 111.

⁵¹ See id.

⁵² See *Commissioner of Internal Revenue v. Enron Subic Power Corporation*, 596 Phil. 229, 235 (2009).

⁵³ See *TSPIC Corporation v. TSPIC Employees Union (FFW)*, 568 Phil. 774, 783 (2008), citing *Centro Escolar University Faculty and Allied Workers Union-Independent v. CA*, 523 Phil. 427, 439 (2006).

As earlier stated, Dr. Cruz, the company-designated physician, found Garcia to be suffering from a Grade 10 disability rating, as opposed to that of Garcia's own physician, Dr. Escutin, who diagnosed him with a work-related total and permanent injury on his cervical spine, rendering him unfit to be a seaman in whatever capacity. In view of such contrasting diagnoses, Garcia should have resorted to the conflict-resolution mechanism provided under the VELA-AMOSUP CBA. His non-compliance with the same would necessarily result in the affirmance of the findings of the company-designated physician.

In any case, the findings of Dr. Salvador and Dr. Cruz, the company-designated physicians, should prevail considering that they examined, diagnosed, and treated Garcia from his repatriation on May 20, 2010 until he was assessed with a Grade 10 disability rating; whereas the independent physician, Dr. Escutin, only examined Garcia sparingly on April 25, 2011⁵⁴ after he filed his claim for total and permanent disability benefits before the NLRC on November 8, 2010.⁵⁵ Jurisprudence holds that, under these circumstances, the assessment of the company-designated physician should be given more credence for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records.⁵⁶

All told, the NLRC correctly ruled that in light of the conclusive findings of the company-designated physicians that Garcia only suffers from a Grade 10 disability, he is entitled to only US\$10,075.00 – in accordance with the provisions of the VELA-AMOSUP CBA – no more, no less. In view thereof, a reversal of the CA ruling is warranted.

As a final note, it must be stressed that while the Court adheres to the principle of liberality in favor of the seafarer, it cannot allow claims for compensation based on whims and caprices. When the evidence presented negates compensability, the claim must fail, lest it causes injustice to the employer.⁵⁷

WHEREFORE, the petition is **GRANTED**. The Decision dated December 14, 2012 and the Resolution dated June 19, 2013 of the Court of Appeals in CA-G.R. SP No. 123272 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated October 24, 2011 and the Resolution dated December 12, 2011 of the National Labor Relations Commission in NLRC LAC No. 08-000688-11 are hereby **REINSTATED**.

⁵⁴ See also Disability Report dated April 25, 2011; CA *rollo*, pp. 193-194. See also *rollo*, p. 17.

⁵⁵ See complaint; CA *rollo*, pp. 46-47.

⁵⁶ See *Formerly INC Shipmanagement Incorporated (now INC Navigation Co. Philippines, Inc.) v. Rosales*, G.R. No. 195832, October 1, 2014.

⁵⁷ *Francisco v. Bahia Shipping Services, Inc.*, 650 Phil. 200, 207 (2010).

SO ORDERED.

U.P. Perlas
ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice