Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

EDMUND C. MAWANAY,
Petitioner,

- versus -

PHILIPPINE TRANSMARINE CARRIERS, INC., RIZZO-BOTTIGLIERI – DE CARLINI ARMATORISPA and/or CAPT. DANILO SALASAN,*
Respondents.

G.R. No. 228684

Present:

PERALTA, *J.*,
Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
CARANDANG,** *JJ.*

Promulgated:

March 6, 2019

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DECISION

REYES, A., JR., *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated June 8, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 143132, and its Resolution[3] dated October 17, 2016, denying the motion for reconsideration thereof. The assailed decision granted the petition for *certiorari* filed by Edmund C. Mawanay (petitioner), annulled and set aside the Decision and Resolution, dated July 10, 2015 and September 21, 2015, respectively, of the National Labor Relations Commission (NLRC), and reinstated the Decision dated February 27, 2015 issued by the Labor Arbiter (LA).

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* Salasalan in some parts of the *rollo*.

** Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

1 *Rollo*, pp. 9-31.

2 Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez concurring; id. at 34-46.

3 Id. at 47-48.

The Antecedent Facts

The petitioner was hired by respondent Rizzo-Bottiglieri-De Carlini Armatorispa through its local manning agency in the Philippines - respondent Philippine Transmarine Carriers, Inc. (PTCI) on July 10, 2013.[4]

Under the employment contract, the petitioner was employed as an ordinary seaman on board the ocean-going vessel *Giovanni Battista Bottiglieri* for a period of eight (8) months which commenced on July 24, 2013, with a basic monthly salary of US$430.00.[5]

On August 30, 2013, while removing rust at the ship's deck, the petitioner experienced severe headache and dizziness. He brushed these aside thinking that they were merely caused by the exhaustion of having to work continuously for three days. The pain, however, persisted the whole day. The next day, while performing his usual tasks at the deck, the petitioner collapsed after experiencing shortness of breath and suffocation. The petitioner was then given first aid and allowed to rest. The next day, the petitioner again lost consciousness while he was returning the tools and equipment used in his work. With this, it was decided that the petitioner was to be brought to a medical facility at the next port of destination.[6]

On October 1, 2013, the vessel reached the port of Fujairah, United Arab Emirates. The petitioner was then brought to the Fujairah Port Clinic where he underwent laboratory scans and a CT scan of his brain, and was diagnosed to be suffering from "chronic headache/sinusitis; increase intra-cranial pressure." The petitioner was confined for three days and thereafter declared unfit for sea duty. On October 6, 2013, the petitioner was medically repatriated to the Philippines.[7]

Upon his arrival, the petitioner immediately reported to PTCI, which then referred him to the company's accredited physician for post-employment medical examination. Due to his recurring headache, the petitioner was advised to consult with an ENT specialist, and was found to have vertiginous migraine. He was prescribed medications to manage his pain, and was told to return for another check-up on October 18, 2013. As the petitioner's headache persisted, he was told to undergo an MRI, which nonetheless yielded normal results. Despite oral medications, the petitioner claimed that he remained to experience headache. He was then referred to and seen by the company-designated neurologist on January 17, 2014 which found the petitioner to be suffering from cluster headache thereby prescribing medications to alleviate pains and attacks.[8]

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4 Id. at 35.
5 Id.
6 Id.
7 Id.
8 Id. at 35-36.

On January 21, 2014, the company-designated physician issued a medical report reflecting the treatments the petitioner has undergone, his present medical condition, and concluded on the basis thereof that his interim disability assessment is Grade 10.[9]

Two medical reports by the company-designated physician followed. In the first which was issued on February 19, 2014, the physician indicated the possibility that the petitioner is feigning illness considering that all the diagnostic tests results are normal. In this regard, the report stated that the petitioner may be cleared during his next check-up, but emphasized that migraine is a chronic disease that can be triggered by external stimuli. The final medical report on the other hand, issued on March 5, 2014, stated that the petitioner is no longer suffering from headache and as such, is cleared of his condition.[10]

On August 26, 2014, the petitioner filed a complaint for permanent and total disability benefits before the NLRC. The petitioner submits that since the company-designated physician stopped treatment after five sessions despite the fact that he has yet recovered from illness, he was constrained to consult with another doctor, Dr. May Donato-Tan (Dr. Donato-Tan). On August 18, 2014, on the basis of the results of laboratory tests and examinations, Dr. Donato-Tan issued a medical certificate declaring the petitioner permanently and totally disable to perform his work as a seaman.[11]

On February 27, 2015, the LA rendered his Decision dismissing the petitioner's claim for permanent and total disability benefits, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered, [dismissing] the instant complaint for utter lack of merit.
>
> SO ORDERED.[12]

The LA held that there is no reason to deviate from the findings of the company-designated physician that the petitioner is fit to work, especially as the latter's diagnosis is a result of a series of medical examinations, tests, and treatments.[13]

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9 Id. at 36.
10 Id.
11 Id. at 36-37.
12 Id. at 38.
13 Id. at 37.

The petitioner appealed to the NLRC, which rendered its Decision on July 10, 2015, reversing and setting aside the decision of the LA and finding the petitioner to be entitled to permanent and total disability benefit, *viz.*:

> WHEREFORE, finding the appeal to be meritorious, the judgment [*a quo*] is REVERSED and SET ASIDE and a NEW ONE entered reading as follows:
>
> 1.) Respondents, *in solidum* shall pay in peso equivalent at time of payment US$93,154.00 as disability benefits;
> 2.) 10% thereof as attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[14]

In so ruling, the NLRC pointed out the glaring inconsistency in the findings of the company-designated physician. The NLRC noted that while the company-designated physician declared that the petitioner is free from illness, at the same time, he recognized that migraine is chronic and can easily be triggered by external stimuli.[15]

The NLRC also ruled that the petitioner is entitled to permanent and total disability as he suffers from recurrent headache and dizziness for more than 120 days or exactly for a period of 10 months from his repatriation.[16]

The respondents filed a motion for reconsideration of the said decision, but the same was denied by the NLRC in its Resolution dated September 21, 2015.[17]

The respondents then filed a petition for *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion in granting the petitioner permanent and total disability benefits and attorney's fees.

Ruling of the CA

On June 8, 2016, the CA rendered the herein assailed Decision,[18] which granted the petition for *certiorari* filed by the respondents, the *fallo* of which reads:

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14 Id. at 40.
15 Id. at 39.
16 Id.
17 Id. at 40.
18 Id. at 34-46.

> WHEREFORE, premises considered, the instant petition for certiorari is hereby GRANTED. The assailed Decision dated July 10, 2015 and the Resolution dated September 21, 2015 of public respondent [NLRC], Fourth Division, are hereby ANNULLED and SET ASIDE. Accordingly, the complaint for permanent and total disability compensation filed by [the petitioner] is DISMISSED.
>
> SO ORDERED.[19]

The CA held that the parties are bound by the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA SEC) in that the company-designated physician's findings and assessment is controlling on the matter of disability or fitness to work of a seafarer.[20]

At any rate, applying the ruling in the case of *Vergara v. Hammonia Maritime Services*,[21] the CA adjudged the petitioner ineligible to permanent and total disability claims. The CA emphasized that the mere lapse of the 120-day period does not automatically entitle the petitioner to his claim particularly because he requires further medical attention and the maximum 240-day period from the time of the petitioner's repatriation has not yet lapsed at the time the company-designated physician issued a final assessment.[22]

Moreover, the CA declared that the NLRC erred in relying fully with the company-designated physician's assessment, as it is settled that the latter's findings are not binding on the labor tribunals and the courts.[23]

The petitioner sought a reconsideration of the Decision dated June 8, 2016, but the CA denied it in its Resolution[24] dated September 21, 2015.

Issues

In the instant petition, the petitioner submits the following issues for this Court's resolution:

> WHETHER OR NOT THE CA ERRED IN THE FOLLOWING:

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19 Id. at 46.
20 Id. at 41.
21 588 Phil. 895 (2008).
22 *Rollo*, pp. 44-45.
23 Id. at 43.
24 Id. at 40.

a. WHEN IT RULED THAT THE PETITIONER IS NOT ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS;
b. WHEN IT GAVE SOLE CREDENCE TO THE FINDINGS OF THE PETITIONER'S PERSONAL PHYSICIAN[; and]
c. WHEN IT AWARDED ATTORNEY'S FEES TO THE PETITIONER.[25]

Ruling of the Court

The petitioner entreats that the Court adhere to the findings of his physician that he is afflicted with cardio-vascular disease, a compensable illness under Section 32-A (11) of the POEA SEC. The petitioner submits that he has continuously served PTCI for three years, thus, considering that the illness supervened in the course of his employment, the same is work-related particularly considering the working conditions under which the seaman is exposed to.[26]

In addition, the petitioner argues that labor tribunals are not bound by the medical findings of the company-designated physician and that the seafarer is not precluded from engaging the services of a physician of his own choice to obtain a second medical opinion.[27] Claiming that the company-designated physician abandoned treatment, the petitioner then invites the Court to give more weight to his own physician's finding that he is suffering from cardio-vascular disease which rendered him unable to work for more than 120 days, and therefore, entitled to permanent total disability benefit.[28]

For their part, the respondents aver in their Comment that the petitioner was diagnosed and treated for his recurrent headache and dizziness.[29] The respondents narrated that the petitioner commenced his treatment with the company-designated physician on October 8, 2013. On January 21, 2014, prior to the expiration of the 120-day period, the company-designated physician issued a medical report. Therein, the physician stated that the petitioner is still under the care of the Neurologist but is expected to respond to his medications. In the interim, the petitioner was given a disability rating of Grade 10.[30] Thereafter, the petitioner was eventually cleared by the company-designated physician on March 5, 2014, the 148th day of treatment period. Having been cleared from illness within the 240-day period, the petitioner is not entitled to disability claims.[31]

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25 Id. at 18.
26 Id. at 18-20.
27 Id. at 23.
28 Id. at 25-27.
29 Id. at 56-57.
30 Id. at 67.
31 Id. at 56-57.

The petition is ***not meritorious.***

Initially, it must be stated that the compensability of the petitioner's illness is a factual issue that is beyond the province of a petition for review on *certiorari.* Nonetheless, the conflicting rulings of the NLRC and the CA, present an exception to the rule and justifies the Court's examination.[32]

Primarily, the mere lapse of 120 days with the petitioner remaining incapacitated to resume his duties and earn a gainful occupation does not automatically entitle him to permanent total disability benefits.

The Court, in the recent case of *Oriental Shipmanagement Co., Inc. v. Ocangas*,[33] clarified that the 120-day rule applies only in cases where the complaint for maritime disability compensation was filed prior to October 6, 2008. Consequently, the succeeding claims, as in the case at bar where the complaint was filed by the petitioner on August 26, 2014, are covered by the 240-day rule.[34]

The determination of the rights of a seafarer for disability compensation, when covered by the 240-day rule, requires a balance in application by Philippine law, the parties' contractual obligations under the POEA SEC and/or Collective Bargaining Agreement, and the pertinent medical findings of the seafarer's condition by his own physician and the company-designated physician.[35] The interplay of these rules has been explained by the Court in *Kestrel Shipping Co. Inc., et al. v. Munar*,[36] which succinctly sets forth the following procedure for compliance under the 240-day rule:

> [T]he 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 [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.[37]

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32 *De Leon v. Maunlad Trans, Inc., et al.*, 805 Phil. 531, 539 (2017).
33 G.R. No. 226766, September 27, 2017, 841 SCRA 258.
34 Id. at 268.
35 *OSG Shipmanagement Manila, Inc., et al. v. Pellazar*, 740 Phil. 638, 648-649 (2014).
36 702 Phil. 717 (2013).
37 Id. at 734.

Reyes

Proceeding from the foregoing ruling, with the declaration of the company-designated physician that the petitioner is fit to work, under Section 20-B(3) of the POEA SEC, the seafarer in case of disagreement, may then consult with his own doctor. In the event of variance in the opinions of the company-designated physician and the seafarer's doctor of choice, the matter may be referred to a third doctor chosen by both parties whose diagnosis shall be final and binding.[38]

Tested against the attendant factual circumstances, the Court finds that in here, the findings issued by the company-designated physician prevails for two reasons: first, on account of the petitioner's breach of his contractual obligations under the POEA SEC; and second, on the basis of the intrinsic merit and reliability of the medical report issued.

Anent the first, it bears to recall that the petitioner was repatriated and initially diagnosed by the company-designated physician on October 6, 2013. From then on until January 20, 2014, the petitioner has been undergoing various tests, consultations, and advised to take medications. On January 21, 2014, prior to the lapse of the 120-day period, the company-designated physician issued a medical report stating that the petitioner needs further medical treatment. On the same report, the company-designated physician gave the petitioner's illness an interim disability assessment of Grade 10. Finally, 150 days from the petitioner's repatriation or on March 5, 2014, the company-designated physician issued a final medical report clearing the petitioner of his illness. It must be noted that up until then, the petitioner has been complaining and was treated of severe headache and dizziness. Five months thereafter, the petitioner consulted with his physician, who then issued a medical report on August 18, 2014, this time, finding the petitioner to be suffering from cardio-vascular disease, and as such is totally and permanently unable to continue with work.

From these undisputed facts, the following may be drawn: *first,* that the company-designated physician complied with the law when he issued a temporary disability rating within the 120-day period and a final assessment of the petitioner's medical status prior to the expiration of the 240-day period; *second,* that the petitioner, aggrieved of the findings issued by the company-designated physician, availed of his rights under the POEA SEC and consulted with his own physician who issued a contrary finding; and *finally,* that despite the conflicting opinions of the two doctors, the matter was not referred to a third doctor as mandated by Section 20-B(3) of the POEA SEC.

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[38] Id. at 734-735.

The dispute mechanism to determine liability for a disability benefits claim set forth under the POEA SEC is a mandatory procedure which must be complied with by the parties. It is an obligation imposed not only by law, but as well, as a stipulation in the contract signed by the parties. Failure to comply with the aforementioned procedure renders the disability grading and assessment by the company-designated physician conclusive, the latter being the primary person to determine the seafarer's disability or fitness to work.[39]

Here, the company-designated physician rendered his assessment within the specified period. The petitioner, instead of expressing his disagreement to the said findings, consulted a physician of his choice five months thereafter, and then filed a Complaint for permanent total disability benefits on this basis. The petitioner, by pursuing his claim before the labor tribunals without referring the conflicting opinions to a third doctor for final determination, committed a breach of his contractual obligation[40] and renders final upon the Court the assessment by the company-designated physician that the petitioner is fit to work.[41]

Notably, the conflicting opinions of the two physicians as to the type of illness the petitioner is suffering highlights even more the importance of seeking the opinion of a third doctor. As between the two opinions nonetheless, even setting the mandatory procedure aside, the Court still finds the assessment and the disability rating by the company-designated physician to be more worthy of belief and credence. The Court, in making such conclusion, is particularly mindful of the efforts exerted by the company-designated physician to examine, diagnose, and treat the petitioner. It was the company-designated physician who initially attended to the petitioner after repatriation, the one who referred him to the proper medical specialists, and consistently monitored his progress until he was eventually declared fit to work on March 5, 2014. Ultimately, the certification issued by the company-designated physician is based on medical records obtained after a lengthy and thorough examination of the petitioner. In contrast, the assessment relied upon by the petitioner from his own physician was issued five months after the company-designated physician's assessment and only after one consultation/examination. This brings legitimate doubts as to the accuracy of the diagnosis issued by the petitioner's physician. For these reasons, the Court cannot merely set aside the company-designated physician's findings in lieu of that issued by the petitioner's doctor.[42]

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39 *OSG Shipmanagement Manila, Inc., et al. v. Pellazar*, supra note 35, at 644-645.

40 Id., citing *Phil. Hammonia Ship Agency, Inc., et al. v. Dumadag*, 712 Phil. 507, 521 (2013).

41 *'Jebsens' Maritime, Inc., et al. v. Rapiz*, 803 Phil. 266, 272 (2017); *Vergara v. Hammonia Maritime Services Inc.*, supra note 21, 908.

42 *See Wilhelmsen-Smith Bell Manning, et al. v. Suarez*, 758 Phil. 540, 554 (2015); *Nazareno v. Maersk Filipinas Crewing, Inc., et al.*, 704 Phil. 625, 633 (2013).

While it is true that the provisions of the POEA SEC must be construed logically and liberally in favor of Filipino seamen in pursuit of their employment on board ocean-going vessels[43] consistent with the State's policy to afford full protection to labor,[44] it does not mean that the Court should automatically rule in favor of the seafarer. The provisions of the POEA SEC must be weighed in accordance with the prescribed laws, procedure, and provisions of contract freely agreed upon by the parties, and with utmost regard as well of the rights of the employers.

In closing, it must be said that the Court commiserates with the plight of our seafarers who had to sacrifice and endure a lot in order to give their families a better life. Nonetheless, the law and rules are there for a reason. They give order and serve as an equalizing force between the different sectors of society. Thus, it must be respected and followed. While it can be said that the POEA SEC was drafted in order to promote the interest of Filipino workers abroad, the same does not mean that its interpretation and implementation would have to always benefit labor. The goal of every court in every litigation is to render justice. And in this sense, it is not justice to favor labor on this score alone. Neither does this excuses the workers from compliance with their obligations under the contract. The scales of justice tilts in favor of labor only where the evidence presented by both is in an equipoise,[45] and with due consideration to attendant circumstances. When it is clear that it is the employee who failed to meet his freely and lawfully contracted obligation, the Court must not hesitate to rule against them for as long as the same is in accordance with what is due in light of established facts, pertinent law, and relevant jurisprudence.[46]

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on *certiorari* is **DENIED**. The Decision dated June 8, 2016 of the Court of Appeals in CA-G.R. SP No. 143132, and its and Resolution dated October 17, 2016, are hereby **AFFIRMED.**

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

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43 *Panganiban v. Tara Trading Shipmanagement Inc., et al.*, 647 Phil. 675, 691 (2010).
44 1987 CONSTITUTION, Article XIII, Section 3.
45 *Grande v. Philippine Nautical Training Colleges*, 806 Phil. 601, 622 (2017).
46 *Reyes v. Glaucoma Research Foundation, Inc., et al.*, 760 Phil. 779, 794 (2015).

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

ATTESTATION

I attest 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.

DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

LUCAS P. BERSAMIN
Chief Justice