

SEVENTEENTH DIVISION

[CA-G.R. SP No. 136813, February 23, 2015]

PHILIPPINE TRANSMARINE CARRIERS, INC., MARINE SHIPMANAGEMENT LTD., AND/OR ANDRE CARLO TORIBIO^[1], PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION) AND ORLANDO S. TAN, RESPONDENTS.

DECISION

GARCIA, R. R. J.:

Before Us is a Petition for Certiorari^[2] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision^[3] dated May 28, 2014 of public respondent National Labor Relations Commission (NLRC) which reversed the Decision^[4] dated November 29, 2013 of the Labor Arbiter and, in its stead, ordered petitioners to jointly and severally pay private respondent Orlando S. Tan total permanent disability benefits of US\$60,000.00, sickness allowance of US\$1,044.00, reimbursement of medical expenses in the amount of P66,000.00, moral and exemplary damages in the total amount of P100,000.00 and attorney's fees equivalent to ten percent (10%) of the total award; and the Resolution^[5] dated June 25, 2014 denying the motion for reconsideration thereof.

THE FACTS

On February 16, 2012, private respondent Orlando S. Tan was hired as Ordinary Seaman by petitioner Philippine Transmarine Carriers, Inc. to work for its foreign principal petitioner Marine Shipmanagement Limited⁶. The contract of employment^[7] stipulated that private respondent was to work for a period of eight (8) months with a basic salary of US\$ 516.00 per month. He joined his vessel of assignment, MV Pago, on March 28, 2012.

During the sixth month of his contract, or sometime in September 2012, private respondent suffered lower abdominal pain while he was moving provisions of the vessel weighing about 40-50 kilograms. The pain became recurrent, hence, he informed the Master of the vessel about it. Since the vessel was then in open seas, he was not able to undergo any medical examination. In the meantime, he took pain reliever for two (2) weeks. On September 24, 2012, he was ordered to assist in cleaning the forward portion of the vessel. The task required him to move heavy equipment from one area to another. Thereafter, he felt severe pain in his scrotum.

When the ship docked at the Port of Charleston, South Carolina, USA on September 25, 2012, he had a check-up at a hospital. The initial diagnosis was that he was suffering from *inguinal hernia*. He was advised not to lift objects weighing more than twenty (20) pounds.^[8] After his check-up, the pain still persisted and became unbearable. Consequently, on October 25, 2012, he was repatriated to the

Philippines and arrived in the country on the next day.

On October 31, 2012, private respondent reported to the company-designated clinic, Marine Medical Services, for medical examination. After undergoing physical examination and *inguino-scrotal ultrasound*, it was confirmed that private respondent was suffering from *right inguinal hernia*. In the Medical Report^[9] of even date, it was suggested that private respondent should undergo the procedure *right inguinal herniorrhaphy* to address his *hernia*. This procedure costs P80,000.00. It was also indicated that private respondent was to report back on November 21, 2012 for reevaluation.

On January 10, 2013, private respondent underwent a medical procedure called *hernia repair, right, with prolene mesh application* at the St. Luke's Medical Center under Dr. Oscar Mercado, Jr. who is not the company-designated physician.^[10] During the operation, a lipoma of the spermatic cord was discovered and removed.^[11] Private respondent shouldered all the hospital expenses.

On March 6, 2013, private respondent filed with the Arbitration Branch of public respondent NLRC the instant complaint^[12] for total and permanent disability benefits and damages against petitioners Philippine Transmarine Carriers, Inc., its crewing manager^[13] Andre Carlo Toribio, and Marine Shipmanagement Limited.

During the pendency of the case with the Labor Arbiter but before the parties could submit their position papers, private respondent consulted with Dr. Christopher F. Perez, a urologist. Dr. Perez issued a Medical Certificate^[14] dated May 14, 2013 containing the following remarks: "*Presently unfit to work*" and a notation that private respondent was experiencing scrotal pain. On the next day, or on May 15, 2013, Dr. May S. Donato-Tan, a cardiologist, issued a Medical Certificate^[15] of even date to the effect that private respondent was suffering from permanent disability. The medical certificate stated that despite undergoing *inguinal hernia repair*, private respondent is still very apprehensive because he still experiences pain over his right inguinal area specially while walking and using tight underwear. Also, despite the operation and an explanation to him that the mass removed from his spermatic cord is just a lipoma, he is worried that his condition will develop into cancer. Because of this, he lacks sleep and sometimes refuses to eat. With private respondent's attitude, he will not be able to perform his job effectively, hence he was given permanent disability assessment.

On July 9, 2013, private respondent filed his position paper^[16] where he averred that upon his repatriation, he reported to the office of petitioners. The crewing manager of petitioner Transmarine referred him to the company doctors at St. Luke's Medical Center. As proof of the referral, Annex "G"^[17] was attached to the position paper. He was under the care of Dr. Oscar Mercado. After undergoing laboratory examinations, Dr. Mercado recommended that he undergo *hernia repair, right with prolene mesh application*. Private respondent informed petitioners of the need to undergo surgical procedure but he was asked to wait until petitioner Marine Shipmanagement Ltd. approves the cost of the surgery. He followed up several times until he was told to advance the expenses of the operation subject to reimbursement when petitioner Marine Shipmanagement approves the surgery. Hence, he underwent the required surgery on January 10, 2013. After the surgery,

he sought reimbursement of his medical expenses from petitioners but the latter ignored his claim.

Private respondent averred that he is entitled to total and permanent disability benefits because from the time he was repatriated on October 26, 2012 up to the filing of the complaint, he failed to recover completely from his ailment and to perform the work which he is accustomed to and trained for. The illness he suffered is *hernia*, which is one of the occupational diseases listed under the Philippine Overseas Employment Agency Standard Employment Contract (POEA SEC). Private respondent's disability is attested by the medical certificate issued by Dr. Donato-Tan who categorically stated that he may no longer perform his usual duties as a seaman. He is entitled to disability benefits of US\$125,000.00 pursuant to the collective bargaining agreement covering his employment. Private respondent likewise prayed for the reimbursement of his medical expenses as well as sickwages, actual and exemplary damages and attorney's fees.

In their traverse, petitioners averred that upon private respondent's repatriation, petitioners referred him to the company-designated clinic, Marine Medical Services, and was examined by Dr. Kendrick Sia on October 30, 2012^[18]. After undergoing medical tests, it was confirmed that he was suffering from *right inguinal hernia*. On December 31, 2012, the company physician recommended that he should undergo *right inguinal herniorrhaphy* which is a surgical procedure.^[19] However, private respondent abandoned his treatment with the company-designated doctors. Petitioners later learned that private respondent had himself treated by his private doctor and that he shouldered the cost of the medical procedure performed on him and other medical expenses. Having abandoned his treatment with the company-designated doctors without any justifiable reason, he breached his duty under the POEA SEC to comply with the treatment plan laid out for him by the company-designated physician until he is declared fit to work or the degree of his disability is established. Since he refused to be further examined by the company-designated physician, the latter was prevented from rendering a final assessment of private respondent's state of health. The assessment made by the doctors appointed by private respondent cannot be the basis of an award of disability. Under the POEA SEC, it is the company-designated physician who shall determine the disability grading of the seafarer. Private respondent's medical condition is treatable with surgery. As he already underwent a successful surgery, he should be considered fit to work as seaman. As such, his complaint for disability benefits should be dismissed.

In a Decision^[20] dated November 29, 2013, the Labor Arbiter ruled in favor of petitioners and dismissed private respondent's complaint. The Labor Arbiter gave credence to petitioners' version that private respondent abandoned his medical treatment with the company-designated physicians. There is nothing in the records that would support private respondent's claim that petitioners' crewing manager referred him to the physicians at St. Luke's Medical Center. The evidence he presented to support this claim does not pertain to the crewing manager's referral but to private respondent's request for his final settlement/pay. Having abandoned his medical treatment, he has foreclosed his right to the benefits under the POEA SEC including his right to disability benefits and sickness allowance. Also, under Section 20 (B) (3) of the POEA SEC, it is the company-designated physician who is authorized to assess the fitness or extent of disability of seafarers. Here, private

respondent sued petitioners for disability benefits without seeking the assessment of company physician of his condition. Perforce, private respondent has no cause of action since there was no assessment to contest. The Labor Arbiter, however, granted private respondent's plea for reimbursement of the cost of his operation and expenses on his medication since he really underwent surgery as suggested by the company-designated physician and the same are supported with official receipts. The pertinent portions of the Labor Arbiter's decision are quoted:

xxx Complainant is not entitled to total and permanent disability benefits.

FIRST. The 2010 POEA-SEC xxx was amended to include among others, the effect of failure of the seafarer to report regularly to the company physician in the course of treatment. The purpose of this amendment is to ensure that the seafarers would report regularly to the company physician to undergo the required treatment. Failure would result in the forfeiture of his rights to claim benefits provided in the POEA-SEC.

Here, the accredited physicians of Marine Medical xxx Services xxx were the company physicians appointed by Respondents to diagnose, treat and manage the illness of Complainant. Immediately after his repatriation xxx Complainant submitted himself to company physician Dr. Kendrick Sia for post employment medical examination. In the course of his treatment, he was diagnosed with "Right Inguinal Hernia". On December 31, 2012, Dr. Sia recommended that Complainant undergo surgery called "Right Inguinal Herniorrhapy". But it was another physician, Dr. Oscar Mercado of St Lukes Medical Center who operated on Complainant xxx on January 10, 2013. Clearly, Complainant abandoned his medical treatment under the company physician. Complainant alleged that Respondents' crewing manager referred him to the company physicians at Saint Lukes Medical Center xxx. To prove this, he presented Annex "G" to his position paper supposedly the "referral" to the company physicians at St. Luke's Medical Center. But Annex "G" is not the "referral" but his "request for his final settlement/pay". xxx There being nothing on record showing Dr. Mercado is Respondents' company physician, we conclude that Complainant abandoned his medical treatment with the company physician. Being so, he has foreclosed his right to the benefits under the POEA-SEC, including disability benefits.

SECOND. Pursuant to Section 20 [B] [3] of the POEA-SEC, it is the company physician who is authorized to assess the fitness or extent of disability of seafarers. We have declared that Complainant abandoned the treatment of the company physician and sought the medical treatment of his appointed physician. xxx without seeking the assessment of the company physician on his condition, complainant sued Respondents for disability benefits. Perforce, xxx we conclude that the complaint has no cause of action since there was no assessment to contest.

THIRD. xxx if indeed Complainant is no longer fit to work and is permanently disabled, it is Dr. Mercado, the physician who operated on Complainant rather than Drs. Perez and Tan xxx who is in better position to declare Complainant as such. The failure of Mercado to declare Complainant unfit to work/permanently disabled only bolsters our

conclusion that Complainant is not entitled to permanent and total disability benefits.

xxx

xxx considering that we have declared Complainant to have abandoned his medical treatment with the company physician, Complainant is barred from claiming sickness allowance and reimbursement of medical expenses. But being cognizant that Complainant has really undergone surgery as suggested by the company physician and advanced the payment for the expenses thereof, we are disposed to grant Complainant's claim for reimbursement of medical expenses which are supported by official receipts in the sum of P66,000.00 xxx The claim for sickness allowance stands rejected.

Claims for damages and attorney's fees are rejected for being baseless.

WHEREFORE, premises considered, except for the claim for reimbursement of medical expenses, the complaint is hereby DISMISSED for lack of merit. PHILIPPINE TRANSMARINE CARRIERS INC., MARIN SHIPMANAGEMENT LTD. & ANDRE CARLO TORIBIO are jointly and solidarily ordered to pay ORLANDO S. TAN the sum of PESOS : SIXTY SIX THOUSAND ONLY [P66,000.00], Philippine Currency, representing reimbursement of medical expenses.

SO ORDERED.^[21]

Private respondent filed an appeal with public respondent NLRC which, in a Decision^[22] dated May 28, 2014, reversed the Labor Arbiter's Decision and granted private respondent's plea for total and permanent disability benefits. It was ratiocinated that private respondent's failure to report to the company doctors for treatment and assessment cannot be attributed to his fault. Petitioners did not faithfully comply with their obligation to render timely medical attention to private respondent when they failed to approve the urgent surgery to correct private respondent's *inguinal hernia*. Private respondent cannot be blamed when he consulted an independent surgeon who performed the surgery in January 2013 and two other experts in urology and internal medicine. On account of petitioner's failure to faithfully provide medical attention to private respondent, there arises a conclusive presumption that private respondent is totally and permanently disabled due to the illness he suffered while in the employ of petitioners. Given the strenuous nature of private respondent's shipboard employment, it is logical to conclude that he could no longer resume his work as a seaman as his illness will recur when he goes back to his usual activities. Private respondent was also awarded 120 days sickness allowance. Petitioners' wanton disregard of their duty to provide medical attention and fraudulent refusal to pay their liability gave rise to an award of moral and exemplary damages. The pertinent portions of the assailed decision are quoted:

Addressing, now, the more crucial issue of medical abandonment, it bears emphasizing that the provisions of the 2010 POEA-SEC created a reciprocal obligation on the part of the seafarer and his employer. Such that while the latter is required to report to the company doctors, specially on the date agreed upon, for treatment and assessment, the