

SPECIAL TWELFTH DIVISION

[CA-G.R. SP No. 131729, February 05, 2015]

CROSSWORLD MARINE SERVICES, INC., GOLDEN UNION SHIPPING COMPANY S.A. AND ELEAZAR DIAZ, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND EUGENIO M. GOMEZ, RESPONDENTS.

D E C I S I O N

GALAPATE-LAGUILLES, J:

Before Us is a *Petition for Certiorari*^[1] seeking to nullify and set aside the April 11, 2013 Decision^[2] issued by the National Labor Relations Commission, Fourth Division (Formerly Seventh Division) rendered in NLRC LAC No. OFW (M) 01-000126-13, NLRC NCR Case No. 09-13737-11, affirming the Labor Arbiter's Decision dated November 22, 2012,^[3] as well as the June 20, 2013 Resolution^[4] denying petitioners' Motion for Reconsideration.

The facts that preceded the filing of the Complaint^[5] for permanent total disability benefits, damages and attorney's filed by Eugenio M. Gomez (Gomez) against Crossworld Marine Services, Inc., Golden Shipping Company S.A. and Eleazar Diaz (petitioners) are not disputed.

On October 12, 2011, Crossworld Marine Services, Inc., in behalf of its principal Golden Union Shipping Co., hired Gomez as an Ordinary Seaman in the vessel M/V Elena VE for a period of eleven (11) months, with basic monthly compensation of US\$583.00.^[6] The contract complied with the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean Going Vessels (POEA-SEC).^[7] At the time of Gomez' employment, the employees of M/V Elena VE were covered by a special agreement known as ITF TCC Collective Agreement between the shipowner and the union.^[8]

In the course of the performance of his duty, Gomez accidentally slipped on the icy deck of the ship on February 29, 2012 and, as a consequence thereof, he suffered from low back pain. Upon reaching the port of Antwerp, Belgium on March 15, 2012, Gomez requested for medical assistance for the persistent back pain he was experiencing after the accident.^[9] The attending physician diagnosed him to have been suffering from "Lumbago" or low back pain and he was given medicine for his pain.^[10] He was also advised to rest for three weeks and to seek further medical examination and treatment. On March 19, 2012, Gomez was repatriated to the Philippines.

Upon arrival in the Philippines, Gomez was immediately referred to the company's accredited doctors at International Health Aide Diagnostic Services, Inc. (IHADS) for medical evaluation. He also underwent six sessions of physical therapy but the pain

in his lumbar area still persisted. On April 10, 2012, he saw Dr. Maria Dolores Tay, a company-designated physician, for a follow-up check up and the following findings were observed:

He has finished 6 physical therapy session. Improvement is noted but there is still palpable tenderness on the lumbosacral area. Steriod is injected subcutaneously in the most tender point. This is done by the attending Spine Surgeon. Physiotherapy is discontinued. He should rest and resume rehabilitation after clearance by the Surgeon. If symptoms persist, MRI will be done on his next visit.^[11]

By reason of his recurring pain, on May 11, 2012, IHADS referred Gomez for a magnetic resonance imaging (MRI) of his lumbosacral spine at the UPMC to precisely determine the cause of pain. The MRI test demonstrated the following result:

L4 – L5: disc dessication, diffuse disc bulge with focal central protrusion causing moderate central ste[nosis,] moderate right foraminal stenosis and mild left foraminal stenosis. Bilateral facet joint hypertrophy cont[ribute to] the degree of stenosis.

L5 – S1: disc dessication diffuse disc bulge with focal broad-based central to left far foraminal disc protrusion causing mild central stenosis, mild right foraminal stenosis and severe left foraminal stenosis. Bilateral f[acet joint] hypertrophy contribute to the degree of stenosis.

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IMPRESSION:

Multilevel discogenic and osteophytic central canal and bilateral foraminal stenosis as described, L4 – L5 [and] L5 – S1.

Disc dessication, L4 – L5 and L5 – S1.^[12]

On June 6, 2012, Gomez was hospitalized at the Medical Center Manila for lumbar Laminectomy^[13] and Foraminotomy^[14] to address his medical condition concerning bulging or herniated disc, as per advice by the company doctor.^[15] He was discharged on June 13, 2012.

On June 20, 2012, Gomez went to IHADS for a follow-up check up where he was advised to lose weight and to engage in mild activities. The company-designated doctor also made an assessment of his disability to be at Grade 8 based on the POEA Schedule of Impediments. Follow-up treatments were continued in the hope that Gomez would be restored to his full physical capacity in the performance of his sea duty.^[16]

On September 11, 2012, Dr. Tay issued to Eleazar Diaz a medical report observing that Gomez failed the functional capacity test that would determine his fitness to resume sea duty; that he needed to further develop his flexibility training in two to three months; and that disability assessment at Grade 8 remained unchanged, viz:

PRESENT EXAMINATION:

He still complains of mild low back discomfort although no

neurologic deficits noted. Functional capacity testing was done according to his job description which he did not pass due to back pain on certain motions. He should continue flexibility and strength exercises through his physiatrist. Follow up is scheduled on October 11, 2012.

DIAGNOSIS: Status post laminectomy L4L5 – L5S1 and foraminotomy L4L5 – L5S1. On going physiotherapy.

DISPOSITION: Prognosis is fair to good. His symptoms at present are subjective. If he will pass the functional capacity testing after adequate flexibility is attained, he can resume work at sea.

This is seen in 2 to 3 more months. Interim disability assessment is unchanged at Grade 8 based on the POEA Contract Schedule of Impediments.^[17]

Meantime, Gomez went to see another physician, Dr. Renato P. Runas, for a second opinion regarding the pain he still felt in his lumbosacral area. Dr. Runas found that Gomez' truncal movement was still hampered by pain and numbness. The Medical Evaluation Report dated September 7, 2012 described Gomez' condition as follows:

At present, Seaman Gomez is still incapacitated due to pain on the lower back with numbness of the left lower extremity. Lower back pain is triggered by exertion. He cannot tolerate prolonged walking and standing because of pain. Forward and backward trunk motion is limited because of pain. He has difficulty standing from a sitting position. xxx

Seaman Gomez is still saddled with persistent and chronic moderate to severe low back pain. The residual pain is secondary to the disc disease and osteoarthritis. This chronic residual low back pain proved to be refractory to medications and physiotherapy management. He is unable to carry and lift heavy objects due to stiffness and pain. It is also difficult for him to bend, pick up and carry objects from the floor because of the limitation of trunk motion. The surgery has lessened the intensity of pain but he did not regain his physical capacity to work. As an Ordinary Seaman, he does strenuous and heavy jobs which are no longer possible after the surgery. **He needs complete activity modification to avoid further damage to the spine. He is unfit for sea duty in whatever capacity with a permanent disability since he can no longer perform his work which he is previously engaged in.**^[18]

Accordingly, Gomez demanded payment of total permanent disability benefits from the petitioners but the latter ignored the demand. Efforts towards an amicable settlement were unsuccessful. Thus, on September 13, 2012, Gomez filed a Complaint^[19] asking payment of disability benefits, damages and attorney's fees before the Office of the Labor Arbiter – National Capital Region against the petitioner, docketed as NLRC-NCR-OFW-CASE No. (M) 09-13737-12.

On November 22, 2012, Labor Arbiter Lilia S. Savari rendered a Decision^[20] ruling that Gomez was permanently and totally disabled and that he could no longer resume sea duty. The Labor Arbiter further held that despite the lapse of one

hundred twenty (120) days from Gomez' repatriation, the company-designated physician neither declared that the latter was permanently disabled nor gave him a fit-to-work order. The *fallo* of the said Decision provides:

WHEREFORE, a Decision is hereby rendered ordering Respondents Crossworld Marine Services, Inc. and Golden Union Shipping Company, S.A. to jointly and severally pay complainant Eugenio M. Gomez permanent disability benefit Grade 1, in the amount of **US\$156,816** or its peso equivalent at the exchange rate prevailing at the time of actual payment plus **10%** thereof as and by way of attorney's fees.

SO ORDERED.^[21]

Feeling aggrieved, the petitioners appealed to the National Labor Relations Commission arguing that the labor arbiter erred in declaring Gomez to have been totally and permanently disabled considering that there was improvement in his condition, as shown by a prognosis from fair to good, following his extensive treatment. They likewise contended that Gomez' disability compensation should be limited only to Grade 8 disability as assessed by the company-designated physician based on the Schedule of Impediments of the standard POEA contract. The petitioners thus faulted the labor arbiter in awarding Gomez full disability benefits in the amount of US\$156,816 only under ITF Standard Collective Bargaining Agreement. According further to the petitioners, even assuming that the latter was entitled to permanent and total disability compensation, the amount should be limited to US\$90,882 only in pursuance to the provisions of the ITF TCC Collective Agreement that covers their seafarers and not the one provided under the ITF Standard CBA.

In a Decision^[22] dated April 11, 2013, the NLRC denied the petitioners' appeal and sustained the findings of the Labor Arbiter on the following ratiocination:

With the foregoing state of physical health despite extensive medical attention accorded to complainant, We sustain the ruling of the Labor Arbiter that complainant is suffering from a permanent total disability. It is not difficult to understand that complainant deemed it pointless to go on with further therapy after he consulted a specialist of his choice. Given the medical condition of complainant as elaborated by complainant's specialist of choice and with due regard to the observations of the company-designated doctors that complainant's back pain persisted despite surgery and rehabilitation for a period of six months, We are inclined to believe that complainant is indeed suffering from a permanent total disability as he is already permanently impaired in his earning capacity as an ordinary seaman or in any other work of similar kind or nature. Permanent total disability does not mean absolute helplessness. It means disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do xxx.^[23] (Citation omitted)

The petitioners sought reconsideration of the adverse Decision but the NLRC likewise denied the same per Resolution^[24] dated June 30, 2013. Hence, this petition ascribing grave abuse of discretion amounting to lack of jurisdiction on the part of

the NLRC in affirming the award in favor of Gomez of full disability benefits in the amount of US\$156,816 under the ITF Standard CBA.^[25]

We now resolve.

Whether the lumbosacral injury, *i.e.* herniated disc and disc dessication at L4-L5 and L5-S1, suffered by Gomez was work-related and/or caused by an accident that happened in the course of the performance of his duty as an Ordinary Seaman is not in issue in the instant case. It is compensable under the POEA-SEC and the applicable collective bargaining agreement, the ITF TCC Collective Agreement, that covered the employees of M/V Elene VE.

The crux of the controversy revolves around a determination of Gomez' injury, whether the same is permanent total disability, in order to ascertain the rate of disability compensation that should be awarded to him.

In *Remegio v. NLRC*,^[26] the Supreme Court expounded on the concept of permanent total disability as applied to Filipino seafarers, thus:

"Disability" is generally defined as "loss or impairment of a physical or mental function resulting from injury or sickness." Clearly, "disability" is not synonymous with "sickness" or "illness," the former being a potential effect of the latter. xxx

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Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* that **"disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that [he] was trained for or accustomed to perform, or any kind of work which a person of [his] mentality and attainment could do.** It does not mean absolute helplessness." It likewise cited *Bejerano v. ECC*, that in a disability compensation, **it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.** (Emphasis Ours)

The evidence clearly establish that Gomez' injury rendered him permanently disabled which hindered him from performing the work he was trained for or accustomed to do. Despite immediate and extensive medical treatment which lasted for six (6) months or one hundred eighty (180) days accorded him by the petitioners, the company-designated physician's assessment of his injury did not show remarkable progress. The surgical procedures, *i.e.* laminectomy and foraminotomy, that were conducted to address Gomez' herniated discs did not entirely free him from low back pain. Although Dr. Tay made a prognosis of "fair to good" on September 11, 2012, Gomez' disability with a Grade 8 impediment