

SIXTEENTH DIVISION

[CA-G.R. SP No. 129366, May 20, 2014]

TSM SHIPPING PHILIPPINES, INC., MOWINCKEL SHIP MANAGEMENT AND ALFONSO DEL CASTILLO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND FREDDIE BALONTONG, RESPONDENTS.

DECISION

MACALINO, J:

Before Us is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court seeking to annul and set aside the Decision^[2] dated November 29, 2012 of the National Labor Relations Commission (NLRC), which modified the Decision^[3] dated September 24, 2012 of Labor Arbiter Cheryl Ampil (the Labor Arbiter); and the NLRC Resolution^[4] dated January 28, 2013, which denied petitioners' Motion for Reconsideration in NLRC LAC (OFW-M) 10-00090-12; (NLRC NCR (M) 01-00222-12). The dispositive portion of the NLRC Decision dated November 29, 2012 reads:

"WHEREFORE, the judgment on appeal is MODIFIED as to the permanent total disability from USD 60,000.00 to USD 90,000.00.

All the other awards are affirmed in toto, and payable in peso equivalent at the time of payment.

SO ORDERED."^[5]

FACTS

Private respondent Freddie Balontong (private respondent) had been employed as a fitter by petitioner TSM Shipping Philippines, Inc. (TSM) since 1998.^[6] On January 3, 2011, he was re-hired by TSM as a fitter on board the vessel "Goya" (the vessel), for and in behalf of its foreign principal, petitioner Mowinckel Ship Management. Petitioner Alfonso del Castillo was an officer of TSM. Private respondent's employment contract was for a period of 8 months with a basic salary of Seven Hundred Eighty-One Dollars (USD781.00).^[7]

On January 5, 2011, private respondent underwent a pre-employment medical examination and was declared "fit for employment."^[8] On January 27, 2011, he joined the vessel.^[9] He was assigned to perform the following tasks:

- "- Fi[t] and assembl[e] fabricated parts of machinery, engines and other metal apparatus;
- Examin[e] drawings and list materials to obtain parts specifications;
- Pla[n] sequence of operation;

- Examin[e] parts of flaws and chec[k] accuracy of fit using gauges, micrometers and other measuring devices[;]
- Assist Engineers in overhauling (Main Engines, Auxiliary Engines);
- Repair, fabricate, lay-out pipeline according to ship specification approved by the Chief Engineer;
- Welding, repair ship plates, bracket approved by Chief Engineer;
- Machining, fabricate fitting, flanges, ship spare fittings, maintain and secure ship engine tools in workshop according to ship maintenance program.”^[10]

On May 21, 2011, however, while performing his tasks as a fitter, private respondent was injured. He stated that when he was tightening the bolts and nuts of the inductor valve, he got out-balanced and he felt a sudden onset of pain on his back and right leg joints.^[11] He was given timely medical attention in Argentina and was diagnosed with “Lumbago.”^[12]

On July 21, 2011, he was sent to a doctor in China because he complained that he was suffering pain from his right leg joints.^[13] He was declared “not fit for work to prevent worse condition of the patient.”^[14]

On August 1, 2011, private respondent was medically repatriated. He declared that he was timely referred by TSM to the company-designated doctors at the University Physicians Medical Center. On August 16, 2011, his MRI results indicated the following impression:

“Multilevel discogenic and osteophytic central canal and bilateral foraminal stenoses, as described.
Lumbar spondylosis.”^[15]

On November 22, 2011, his “EMG-NCV^[16] studies showed right S1 Radioculopathy, incomplete, with acute denervation changes.”^[17]

Private respondent stated that because his condition did not improve, he also consulted an independent doctor who declared him unfit in any capacity for further sea duties as a seafarer.^[18]

Since his repatriation on August 1, 2011 until April 19, 2012, private respondent had attended a total of 96 physical therapy sessions.^[19]

Allegedly, private respondent asked for assistance from petitioners but his request was unheeded.^[20]

On January 5, 2012, private respondent filed a complaint^[21] for disability benefits, sickness allowance, reimbursement of medical expenses, damages and attorney's fees.

Because the parties were unable to settle amicably, they were required to file their respective position papers.

In his position paper,^[22] private respondent alleged that he is entitled to permanent and total disability benefits amounting to Ninety Thousand Dollars (USD90,000.00) because he sustained an injury as a result of an accident while aboard the vessel. He alleged that his medical condition remains and he needs continued treatment. He also stated that on February 16, 2012, he was found to be suffering from lower back pain and weakness of his right lower extremity. He also averred that since his repatriation on August 1, 2011 until his last recorded therapy on April 19, 2012, he has been under medical care for more than eight months or approximately 259 days.

In addition, private respondent said that his entitlement to disability pay, sickness allowance and medical reimbursement is based on his employment contract, as well as on the POEA Standard Employment Contract (POEA-SEC) and the Collective Bargaining Agreement (CBA) that govern his employment.

For their part, petitioners stated in their position paper^[23] that on January 3, 2012, the company-designated physician declared that private respondent has reached "maximum medical cure." On January 4, 2012, he issued his final disability assessment of "Grade 8 – moderate rigidity or 2/3 loss of motion or lifting power of the trunk" on private respondent. Petitioners argued that private respondent is not entitled to permanent and total disability benefits and is only entitled to receive compensation corresponding to said disability grading given by the company-designated physician.

In their reply,^[24] petitioners averred that it is the POEA-SEC that should be applied in the case, not the CBA. This is because private respondent attached only portions of the alleged CBA he is claiming under and not a full copy thereof. They also claimed that private respondent failed to prove that he met an accident from which his disability arose.

On September 24, 2012, the Labor Arbiter rendered a Decision finding for private respondent, the decretal portion of which reads:

"WHEREFORE, respondent TSM Shipping (Phils.) Inc. and/or respondent Mowinckel Ship Management are hereby ordered to pay the complainant the Philippine peso equivalent at the time of actual payment of the following amounts:

Permanent total disability compensation	US[D]60,000.00
Sickness allowance	<u>3,604.62</u>
(US[D] <u>781.00x120days=US[D]3,604.62</u>)	US[D]63,604.62
26days	
10% attorney's fees	<u>6,360.46</u>
	US[D]69,965.08

The liability of the respondents for the judgment is solidary.

SO ORDERED."^[25]

The parties filed their respective appeals before the NLRC.^[26]

On November 29, 2012, the NLRC modified the Decision of the Labor Arbiter and awarded permanent and total disability benefits in favor of private respondent amounting to Ninety Thousand Dollars (USD90,000.00).

Petitioners moved for a reconsideration.²⁷ On January 28, 2013, the NLRC denied petitioners' motion for reconsideration.

ISSUES

- “• Whether public respondent gravely abused its discretion and acted whimsically when it awarded full disability compensation in favor of the private respondent despite the disability grading issued by the company-designated physicians;
- Whether public respondent gravely abused its discretion and acted whimsically when it granted private respondent's Notice of Partial Appeal and awarded disability compensation under the CBA despite the fact that private respondent's disability did not arise from an accident; and
- Whether public respondent gravely abused its discretion and acted whimsically when it affirmed the award of sickness allowance and attorney's fees.”^[28]

In the instant Petition for Certiorari, petitioners contend that the NLRC gravely abused its discretion when it granted full disability compensation in favor of private respondent because the company-designated physician determined that he is suffering from a disability with a grade 8 rating based on the POEA-SEC. They also allege that the NLRC gravely abused its discretion when it applied the CBA in the determination of the disability compensation in favor of private respondent. They argue that there is no evidence that would show that private respondent met an accident in the course of his employment that resulted to his injury. They likewise claim that they have already paid private respondent's sickness allowance. Hence, there is no reason to award the same to private respondent. Lastly, petitioners stated that the grant of attorney's fees is unjustified because they did not remiss from fulfilling their obligation and that their acts were not tainted with bad faith.

OUR RULING

A Petition for Certiorari under Rule 65 of the Rules of Court involves questions of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. This means that there must be a clear showing that the discretion was exercised arbitrarily or despotically.^[29]

In order that a writ of certiorari be issued in the case, petitioners must establish that the NLRC acted arbitrarily or despotically in granting private respondent's claim for permanent and total disability benefits under the CBA, as well as in granting the latter's claim for sickness allowance and attorney's fees.

A. Whether private respondent is entitled to permanent and total disability benefits

Records show that while on board the vessel and doing his work as a fitter, private respondent lost his balance and fell. Consequently, when he consulted a doctor in