

FOURTEENTH DIVISION

[CA-G.R. SP No. 133037, May 12, 2014]

EDGARDO M. MIRASOL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), JEBSENS MARITIME, INC., AND/OR STAR CLIPPERS, LTD., AND/OR MARIA THERESA LUNZAGA, RESPONDENTS.

D E C I S I O N

LIBREA-LEAGOGO, J.:

Before this Court is a Petition for *Certiorari*,^[1] under Rule 65 of the Rules of Court, seeking to annul the Resolutions dated 28 June 2013^[2] and 30 September 2013^[3] issued by the National Labor Relations Commission (Third Division) in the case entitled "*Edgardo Malate Mirasol v. Jebsens Maritime Inc., Star Clippers Ltd. and Maria Theresa Lunzaga*," docketed as NLRC NCR Case No. OFW (M) 11-16383-12; NLRC LAC No. (OFW-M) 03-000279-13. The dispositive portion of the first assailed Resolution reads:

*"WHEREFORE, premises considered, the appeal is **PARTLY GRANTED** and the Decision dated 31 January 2013 is hereby **MODIFIED** ordering respondents-appellants who are solidarily held liable to pay complainant-appellee disability compensation in the amount of US\$7,465 corresponding to the Grade II Schedule of Disability under Section 32 of the POEA Standard Contract.*

*The Labor Arbiter's award of sickness allowance and attorney's fees to complainant-appellee is **AFFIRMED**.*

SO ORDERED."^[4]

The second assailed Resolution denied the petitioner's Motion for Reconsideration.

Private respondents filed their Comment^[5] dated 19 February 2014. Per JRD verification,^[6] no reply was filed as per CMIS entry. Thus, the third paragraph of the Resolution^[7] dated 05 February 2014 is reiterated, and the Petition is submitted for decision.

FACTUAL ANTECEDENTS

A Complaint^[8] dated 08 November 2012 was filed by complainant Edgardo Malate Mirasol against respondents Jebsens Maritime, Inc., Star Clippers Ltd., and/or Maria Theresa Lunzaga for total and permanent disability benefits, moral and exemplary damages, four months basic wages, and attorney's fees.

In his Position Paper^[9] dated 17 December 2012, complainant alleged, *inter alia*, that: he is entitled to total permanent disability benefits of US\$60,000.00 under the

POEA Standard Employment Contract; his illness is work-related as it was sustained in the course of his duty; said illness was not pre-existing since he underwent the mandatory pre-employment medical examination before he was employed by the respondents, and was found to be fit and given a clean bill of health; the law does not require that a seafarer be totally paralyzed in order to claim total permanent disability benefits; he is entitled to moral and exemplary damages, and attorney's fees; respondents must be ordered to pay moral damages in the amount of Php500,000.00; in addition to his sickness/loss of right testicle, he also suffered serious anxiety, sleepless nights, wounded feelings and loss of appetite; respondents must likewise be ordered to pay him exemplary damages of Php500,000.00; and since it was respondents' act of refusing to pay his disability benefits which forced him to litigate, they must likewise be ordered to pay attorney's fees of ten percent (10%) of the total award in his favor.

Complainant also filed an Addendum Supplement^[10] dated 27 December 2012, wherein it was alleged that respondents are legally mandated to provide sickness allowance equivalent to 120 days salaries; and that their refusal to pay sickness allowance is a manifest sign of bad faith which makes them liable for damages.

Respondents filed their Position Paper^[11] dated 05 December 2012, and averred, *inter alia*, that: complainant is not entitled to disability compensation under the POEA Standard Employment Contract because his testicular cancer is not work-related; Section 32 of the POEA Standard Employment Contract states that epididymitis and testicular cancer are not considered as occupational diseases; Section 32-A of the POEA Standard Employment Contract provides that for an occupational disease and the resulting disability or death to be compensable, four conditions must be satisfied; none of these conditions have been met; his work did not involve the risks inherent in acquiring epididymitis and testicular cancer; none of his duties as a First Cook was a contributing factor in the development of epididymitis which is an illness pertaining to the male reproductive organ in relation to sexual intercourse; testicular cancer is a disease in which cells become malignant in one or both testicles; he has the burden of proving the reasonable connection between his ailments and his working conditions; he was onboard the Royal Clipper for ten days before he started complaining of pain in his right testicle; it is medically impossible for him to have developed his epididymitis and testicular cancer in such a short period of time; his epididymitis, which became testicular cancer, is not work-related, and not compensable; and he is not entitled to sickness allowance and reimbursement of medical expenses, damages and attorney's fees.

Respondents filed their Reply^[12] dated 09 January 2013. Complainant also filed his Reply^[13] dated 15 January 2013 and Rejoinder^[14] of even date. Respondents then filed their Rejoinder^[15] dated 18 January 2013.

Labor Arbiter Rommel R. Veluz rendered a Decision^{xvi} dated 31 January 2013, the decretal portion of which reads:

"WHEREFORE, Respondents JEBSENS MARITIME, INC., and STAR CLIPPERS LTD. are solidarily held liable to pay the Complainant the amount of SIXTY THOUSAND U.S. DOLLARS (US\$60,000.00) representing his total and permanent disability benefits, TWO THOUSAND FIVE HUNDRED EIGHTY U.S. DOLLARS (US\$2,580.00) as his sickness allowance; and ten (10%) percent thereof, or SIX

THOUSAND TWO HUNDRED FIFTY EIGHT U.S. DOLLARS (US\$6,258.00) as and for attorney's fees, or their peso equivalent at the time of payment.

All other claims are dismissed for lack of merit.

SO ORDERED.^[17] (Emphasis in the original)

Respondents appealed and filed their Memorandum of Appeal^[18] dated 19 February 2013. Complainant filed his Answer to Respondents' Appeal^[19] dated 18 March 2013.

In its first assailed Resolution^[20] dated 28 June 2013, the NLRC (Third Division) partly granted respondents' appeal, modified the Labor Arbiter's Decision, and affirmed the Labor Arbiter's award of sickness allowance and attorney's fees to complainant, the *fallo* of which was earlier quoted.^[21]

Complainant filed his Motion for Reconsideration^[22] dated 05 August 2013 which was denied by the NLRC (Third Division) in the second assailed Resolution^[23] dated 30 September 2013.

Hence, this Petition for *Certiorari*.

R U L I N G

Petitioner raises a lone ground for allowance of his Petition, *viz*:

"RESPONDENT NLRC (3rd DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION, CONTRARY TO THE FACTS AND APPLICABLE LAWS AND JURISPRUDENCE, IN GRANTING IN PART THE APPEAL OF RESPONDENTS, THUS MODIFYING THE JUDGMENT OF THE HONORABLE LABOR ARBITER BY DECLARING THAT PETITIONER IS ENTITLED ONLY TO PARTIAL DISABILITY BENEFITS EQUIVALENT TO GRADE 11 RATING, INSTEAD OF TOTAL AND PERMANENT DISABILITY BENEFITS PURSUANT TO THE POEA STANDARD CONTRACT FOR SEAFARERS AS FOUND BY THE HON. LABOR ARBITER."^[24]

Petitioner contends, *inter alia*, that: he is rightfully entitled to the payment of total permanent disability benefits amounting to US\$60,000.00 plus sickwages of US\$2,580.00 pursuant to the POEA Standard Employment Contract and applicable jurisprudence; he remains incapacitated and unable to engage in his customary work as a seafarer beyond the 120 day-treatment period, as well as the 240 day-extension of the treatment period; the matter of petitioner no longer being capable of returning to his work was not denied by private respondents; the illnesses were sustained in the course of his employment; the illnesses are work-related since the same were sustained in the course of duty and in relation to the physically exacting nature of his duties; the illnesses were not pre-existing since he underwent the mandatory pre-employment medical examination before he was employed by private respondents, and was found to be fit and given a clean bill of health prior to his employment; the company doctor's declaration is not absolute; the Grade 11 declaration of the company-designated physician is not acceptable in light of jurisprudence, considering the actual facts of the instant case; and when serious doubt exists on the company-designated physician's declaration of the nature of a

seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professional should be made.

Private respondents riposte, *inter alia*, that: public respondent did not commit grave abuse of discretion in ruling that the petitioner's testicular cancer is not work-related; he is not entitled to attorney's fees; there is no reason to disturb the factual findings of the labor tribunals, as the issue of whether or not his testicular cancer is work-related was already resolved at length by public respondent; Dr. Soriano merely narrated his medical history, as culled from the numerous medical reports issued by the company-designated physicians and did not conduct any diagnostic test to confirm his prognosis; despite having no personal knowledge of his actual condition and working environment on board the vessel Royal Clipper, Dr. Soriano sweepingly declared that petitioner is not fit to work as a seaman allegedly because of rigorous physical activities done; the assessment of the company-designated physicians who provided extensive medical treatment is binding; his testicular cancer is not compensable since it is medically impossible for him to have developed such illness in such a short period of ten days; that his disability lasted for more than 240 days does not automatically entitle him to permanent total disability benefits considering that his testicular cancer is evidently not work-related; he is not entitled to any disability benefits under the POEA-SEC; public respondent's finding that his illness is not work-related is supported by substantial evidence; private respondents acted in good faith and in accordance with their obligations under the POEA-SEC; and despite his illness being not work-related, private respondents provided substantial care and medical treatment to him.

The Petition is impressed with merit.

(I)n a special civil action for *certiorari*, the issues are confined to errors of jurisdiction or grave abuse of discretion. In exercising the expanded judicial review over labor cases, (this Court) can grant the petition if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material or decisive of the controversy which necessarily includes looking into the evidence presented by the parties. In other words, (this Court) is empowered to evaluate the materiality and significance of the evidence which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC in relation to all other evidence on record. (This Court) can grant a petition when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.^[25]

(W)hile the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.^[26] The 2010 POEA-SEC defines "work-related illness" as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." In interpreting the said definition, it has been held that for disability to be compensable under Section 20(B) of the (2010) POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. It has likewise been ruled that the list of illnesses/diseases in Section 32-A does not preclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all

the possible injuries that render a seafarer unfit for further sea duties. This is in view of Section 20(B)(4) of the POEA-SEC which states that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Concomitant with such presumption is the burden placed upon the claimant to present substantial evidence that his working conditions caused or at least increased the risk of contracting the disease. Substantial evidence consists of such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that there is a causal connection between the nature of his employment and his illness, or that the risk of contracting the illness was increased by his working conditions. Only a reasonable proof of work-connection, not direct causal relation is required to establish compensability of a non-occupational disease.^[27]

Section 20(A) of the 2010 POEA-SEC provides:

"SECTION 20. Compensation and Benefits. -

A. Compensation and Benefits for Injury or Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x

- 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.*

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.