

# FIRST DIVISION

[ G.R. No. 240054, March 18, 2021 ]

**SATURNINO A. ELEVERA, PETITIONER, VS. ORIENT MARITIME SERVICES, INC.,/OSM CREW MANAGEMENT, INC.,/MS. VENUS RICO, RESPONDENTS.**

## DECISION

### CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> (Petition) under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated September 5, 2017 and Resolution<sup>[3]</sup> dated May 31, 2018 of the Court of Appeals (CA) in the consolidated petitions for *certiorari* docketed as CA-G.R. SP No. 141374 and CA-G.R. SP No. 141404. Apart from awarding attorney's fees, the assailed CA Decision affirmed the ruling of the National Labor Relations Commission (NLRC) that petitioner Saturnino A. Elevera (Elevera) is only entitled to Grade 3 partial disability benefits, but in the reduced amount of US\$39,180.00.

### Facts of the Case

Elevera worked as a 3<sup>rd</sup> Engineer on board the vessel "Normand Baltic" for respondent OSM Maritime Services, Inc.<sup>[4]</sup> (OSM Maritime), on behalf of its foreign principal, OSM Crew Management, Inc. (OSM Crew), under a three-month employment contract.<sup>[5]</sup> He was deployed on January 30, 2013. However, sometime in March 2013, Elevera complained of "ringing sensation on (*sic*) his left ear and dizziness characterized as swirling of the surrounding."<sup>[6]</sup> On March 18, 2013, he was brought to Changi General Hospital due to loss of hearing, where he was diagnosed with "Ear-Vertigo and other Vestibular Disorder-Stress Related."<sup>[7]</sup>

On March 21, 2013, Elevera was repatriated to the Philippines for medical treatment.<sup>[8]</sup> The company-designated physician, Dr. Karen Frances Hao-Quan (Dr. Hao-Quan), diagnosed him with "Mild Sensorineural Hearing Loss, Right Ear; Moderate Sensorineural Hearing Loss, Left Ear; Vestibular Neuronitis, Hypertensive Cardiovascular Disease, and Blepharitis of Both Eyes."<sup>[9]</sup>

On July 1, 2013, another company-designated physician, Dr. Raymond L. Rosales (Dr. Rosales), issued a medical report diagnosing Elevera with Vestibular Neuronitis and recommending a Grade 10 disability rating:

Comments - with intermittent headaches and dizziness, tinnitus, both ears and hearing loss, both ears

Diagnosis - Vestibular Neuronitis

## Recommendation:

His suggested disability grading is Grade 10 - slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient.<sup>[10]</sup>

On August 30, 2013, Dr. Rosales issued yet another medical report this time diagnosing Elevera with Meniere's Disease and declaring him permanently unfit for sea duties:

Diagnosis - Meniere's Disease

Disposition - permanently unfit for sea duties.<sup>[11]</sup>

On September 27, 2013, Elevera filed a complaint for permanent total disability benefits, moral and exemplary damages, attorney's fees, and reimbursement of medical expenses after OSM Maritime refused to pay him full disability benefits.<sup>[12]</sup>

During the proceedings before the Labor Arbiter (LA), OSM Maritime, as represented by Captain Adonis Donato (Capt. Donato), attached to its position paper a Report dated October 16, 2013 issued by Dr. Rosales, which states that Elevera's condition is not work-related or work aggravated:

Diagnosis: Meniere's Disease

- a. Exposure to noise in the engine room/working condition onboard will not aggravate or contribute to seafarer's present medical condition.
- b. Contributory factors:
  - Age
  - Diet (increased intake of salt)<sup>[13]</sup>

On the other hand, Elevera, in his Reply, referred to the Medical Evaluation dated February 3, 2014 issued by his own doctor, Dr. Efren R. Vicaldo (Dr. Vicaldo), which states that: (i) he is unfit to resume work as a seaman in any capacity; (ii) his illness is considered work aggravated/related; (iii) he would require the use of hearing aids for both ears for better hearing and to alleviate symptoms of vertigo; and (iv) he is not expected to land a gainful employment given his medical background.<sup>[14]</sup> As to the causal relation between his work and illness, Elevera emphasized that his 18 years of continuous service within the confines of the engine rooms of OSM Maritime's vessels exposed him to excessive loud and deafening noise, as well as harmful chemicals. To bolster his claim, he quoted medical studies attributing hearing impairment or deafness to exposure to noise or chemicals.<sup>[15]</sup>

## LA Decision

In a Decision<sup>[16]</sup> dated June 23, 2014, the LA dismissed the complaint for lack of merit, the dispositive portion of which states:

**WHEREFORE, premises considered**, the instant Complaint is hereby dismissed for lack of merit.

**SO ORDERED.**<sup>[17]</sup> (Emphasis in the original)

The LA held that Elevera failed to prove that his illness is work related or work aggravated. Although he alleged that his "work [on board] the vessel was confined mainly in the engine room where he was exposed to continuous and deafening engine noise,"<sup>[18]</sup> he still failed to establish that the nature of his work contributed to the development or aggravation of his illness. The LA gave no credence to the Medical Evaluation dated February 3, 2014 of Dr. Vicaldo because it was issued after only a single consultation and without any indication that appropriate tests were conducted to arrive at such opinion. Lastly, the LA dismissed Elevera's other monetary claims for lack of basis.<sup>[19]</sup>

Aggrieved, Elevera filed an appeal with the NLRC.

### **NLRC Decision**

In a Decision<sup>[20]</sup> dated January 9, 2015, the NLRC granted Elevera's appeal and awarded him permanent total disability benefits in the amount of US\$60,000.00. The dispositive portion of the NLRC Decision reads as follows:

**WHEREFORE**, the appeal is hereby **GRANTED** and the Decision of the Labor Arbiter is **REVERSED and SET ASIDE**. A new one is hereby issued ordering respondents OSM Maritime Services, Inc. and OSM Crew Management, Inc. to jointly and severally pay complainant Saturnino A. Elevera permanent total disability benefits of US\$60,000.00 or its peso equivalent at the time of payment.

All other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>[21]</sup> (Emphasis and italics in the original)

Contrary to the findings of the LA, the NLRC held that Elevera's illness is work-related. According to the NLRC, respondents did not refute the medical studies cited by Elevera stating that hearing loss may be caused by "aging, exposure to noise, illness or chemicals and physical trauma or any combination of these."<sup>[22]</sup> Furthermore, Elevera's exposure to deafening noise at the engine room for 18 years under respondents' employ sufficiently established the causal link between his illness and work. The NLRC considered Dr. Rosales' Report dated October 16, 2013 as self-serving and a mere afterthought considering that it was issued only after a complaint had already been filed. As to the extent of Elevera's disability, considering that both Dr. Rosales and Dr. Vicaldo declared him permanently unfit for sea duties, the NLRC concluded that he is suffering from Grade 1 disability and awarded him US\$60,000.00 as prescribed under the Philippine Overseas Employment Administration Standard Employment Contract<sup>[23]</sup> (POEA-SEC). The NLRC refused to apply the OSM Model Agreement and OSM Extended Insurance Manual, which allegedly grant a higher sum, because no copies thereof were submitted.<sup>[24]</sup>

Both parties sought reconsideration of the NLRC Decision. Elevera urged the NLRC

to grant him total and permanent disability benefits in the amount of US\$150,000.00 as provided under the OSM Extended Insurance Manual, a copy of which he attached to his motion. Meanwhile, respondents contended that Elevera was not entitled to any disability benefits.

In a Resolution<sup>[25]</sup> dated May 15, 2015, the NLRC modified its Decision as follows:

**WHEREFORE**, complainant's partial Motion for Reconsideration is **DENIED** for lack of merit. Respondents' Motion for Reconsideration is partly **GRANTED**. The Decision dated 9 January 2015 of this commission is hereby **MODIFIED**, finding respondents local and foreign agency jointly and severally liable to pay complainant partial disability benefit in the amount of **FORTY[-]FOUR THOUSAND FOUR HUNDRED FIVE US DOLLARS (US\$44,405.00)** or its peso equivalent at the time of payment.

*SO ORDERED.*<sup>[26]</sup>

The NLRC still did not apply the OSM Extended Insurance Manual because Elevera did not present any copy of the collective bargaining agreement (CBA) referred to therein, and Elevera did not present proof that he was a member of the union.<sup>[27]</sup>

Although Elevera's illness is work-related, the NLRC held that he is only entitled to a partial disability benefit equivalent to a Grade 3 impediment rating. The NLRC explained that the nearest illness that can be associated with Elevera's case is complete loss of the sense of hearing on both ears, which is a Grade 3 disability and the highest impediment rating that can be granted in case of injury to both ears under the POEA-SEC.<sup>[28]</sup>

Both parties elevated the case to the CA *via* petitions for *certiorari*. Respondents' petition for *certiorari* dated July 23, 2015 was received by the CA on July 24, 2015 and docketed as CA-G.R. SP No. 141374. Whereas, Elevera's petition for *certiorari* dated July 24, 2015 was received by the CA on July 27, 2015 and docketed as CA-G.R. SP No. 141404.<sup>[29]</sup> These petitions for *certiorari* were thereafter consolidated.

### **CA Decision**

In the Decision<sup>[30]</sup> dated September 5, 2017, the CA partially granted Elevera's petition for *certiorari* by awarding attorney's fees equivalent to 10% of the total judgment award, but reduced the amount of partial disability benefits. On the other hand, the CA denied respondents' petition for *certiorari* for lack of merit.

The dispositive portion of the assailed CA Decision reads as follows:

**WHEREFORE**, premises considered, OSM's Petition docketed as **CA GR SP No. 141374** is hereby **DENIED** for lack of merit.

In Elevera's Petition docketed as **CA GR SP No. 141404**, it is **PARTIALLY GRANTED** by awarding attorney's fees equivalent to **10%** of the total judgment award in favor of Elevera but the amount of **US\$44,405.00**, representing partial disability benefit for injury to

petitioner's ears as awarded by the NLRC is decreased to **US\$39,180.00** in accordance with the Schedule of Disability Allowances under the POEA[-]SEC.

**SO ORDERED.**<sup>[31]</sup>

The CA concurred with the NLRC that Elevera's medical condition is work-related. Despite Meniere's Disease not being among the occupational diseases enumerated under the POEA-SEC, Elevera was able to show a reasonable connection between the nature of his work and Meniere's Disease. Elevera rendered 18 years of continuous service to respondents where he was made to work within the confines of the engine room, and was exposed to excessive and deafening noise. And deafness, which may result from having Meniere's Disease, is an occupational disease under the POEA-SEC. The CA, concurring with the NLRC, also disregarded the Report dated October 16, 2013 of Dr. Rosales for being dubious and issued as an afterthought. In addition, the CA also held that the conflict-resolution procedure under the POEA-SEC does not apply in this case because, at the time Elevera filed his complaint, there were no conflicting findings between the company-designated physician and his personal doctor.

The CA also affirmed the Grade 3 disability rating given by the NLRC. However, it found that the NLRC committed an error in the computation of the disability benefit by using 88.81% as a multiplier, instead of 78.36%. Thus, Elevera should only be entitled to US\$39,180.00. The computation was still based on the rates under the POEA-SEC because Elevera was unable to present the CBA or to prove that he is a member of the union. Finally, the CA added 10% attorney's fees to the judgment award in accordance with Article 2208 of the Civil Code.<sup>[32]</sup>

Elevera sought reconsideration of the CA Decision, but was denied through the assailed CA Resolution<sup>[33]</sup> dated May 31, 2018. Hence, this Petition.

Elevera maintains that he is entitled to total and permanent disability benefits, not only in view of the Medical Evaluation dated February 3, 2014 of Dr. Vicaldo, but also of the Medical Report dated August 30, 2013 of Dr. Rosales which declared him permanently unfit for sea duties. He further claims that he remains unemployed as of the date of filing of his Petition, and can no longer go back to the same kind of work he used to perform and was trained for. He insists that his disability benefits, whether total or partial, should be based on the OSM Extended Insurance Manual which provided a higher maximum disability benefit of US\$150,000.00. To bolster his argument, Elevera attached in his Petition a copy of the OSM Model Agreement.

In its Comment,<sup>[34]</sup> OSM Maritime argues that Elevera is not entitled to the higher disability benefit under the OSM Extended Insurance Manual because he failed to submit a copy of the CBA referred to therein and to prove that he is a member of the union. OSM Maritime also asserts that the NLRC should not have admitted the copy of the OSM Extended Insurance Manual in the first place since it was only submitted for the first time before the NLRC without any justification for its belated submission. Lastly, OSM Maritime contends that the Petition should be dismissed for being moot and academic following Elevera's receipt of the NLRC judgment award and their execution of the conditional settlement award.