

SECOND DIVISION

[G.R. No. 253756, May 12, 2021]

RESTY S. CAAMPUED, PETITIONER, VS. NEXT WAVE MARITIME MANAGEMENT, INC., MTM SHIP MANAGEMENT PTE. LTD., AND ARNOLD MARQUEZ, RESPONDENTS.

DECISION

LAZARO-JAVIER, J.:

The Case

This petition for review on *certiorari*^[1] seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 155268:

1. Decision^[2] dated February 10, 2020, affirming the dismissal of the claim for total and permanent disability benefits of Resty S. Caampued (petitioner); and
2. Resolution^[3] dated October 2, 2020, denying petitioner's motion for reconsideration.

Antecedents

On March 29, 2016, respondent Next Wave Maritime Management, Inc., for and on behalf of its principal, respondent MTM Ship Management Pte. Ltd., hired petitioner as Engine Fitter of its vessel "MV Red Cedar" for ten (10) months with a monthly salary of USD649.00.^[4]

Prior to his deployment, petitioner underwent routinary Pre-Employment Medical Examination (PEME), after which, he was declared fit for sea duties with prescribed medication for hypertension.^[5]

Petitioner's responsibilities included strenuous physical activities such as: (a) fabrication and shaping of steel, aluminum, and other materials; (b) lifting of metals and materials for fabrication; (c) daily maintenance and repair of ship's engine, air compressor, and other auxiliary machinery on board; (d) setting up and operating manually controlled machines in skilled precision; (e) maintenance, repair and alteration of vessel machinery; (f) carrying and lifting heavy-duty tools and equipment during maintenance and repair; (g) alignment and securing holding fixtures, cutting tools, and other materials onto vessel machines; (h) assisting the second or third engineer in overhauling ship's engine; and (i) other all around strenuous duties as instructed by the supervisor. To carry out these duties, he had to stand for most of the day and constantly moved around.^[6]

During the second week of May 2016, when petitioner was only two (2) months on

board, the chief engineer tasked him to assist in the repair of the ship's generator. In the process, he was directed to pull the lining of the generator's piston. In a squatting position, he forcefully pulled the piston lining upward. Suddenly, he heard a clicking sound and felt something snap on his back. Shortly thereafter, he suffered mild pain on his lower back. When he reported it to his supervisor, he was given pain reliever and ordered to continue working. Days after, petitioner still suffered from severe low back pain. The chief engineer gave him some more pain reliever and advised him to take a rest until they arrived in Africa.^[7]

In Africa, on June 1, 2016, petitioner was seen at the Welwitschia Hospital where he was diagnosed with "*lower back muscle spasm and Thoracolumbar spondylodiscitis complicated by grade 2 L5-S1 spondylolisthesis; L5-S1 bilateral spondylolysis; L4-5 and L5-S1 intervertebral foraminal attenuation most likely the cause for sciatica.*" His attending physician Dr. Blazic-Van Zyl opined that he may need to undergo surgical treatment and recommended his repatriation.^[8]

Thus, on June 6, 2016, petitioner got medically repatriated. The following day, company-designated physician Dr. Natalio Alegre (Dr. Alegre) of St. Luke's Medical Center evaluated him and ordered for an x-ray and Magnetic Resonance Imaging (MRI) of the lumbosacral spine. The x-ray showed the following findings:^[9]

DEGENERATIVE DISK, T12-L1, L1-L2, L4-L5 and L5-S1
MILD COMPRESSION DEFORMITY, L2
HYPERTROPHIC OSSEOUS CHANGES
GRADE ONE ANTEROLISTHESIS, L5 OVER S1 WITH SPONDYLOSIS

The MRI, on the other hand, revealed the following impressions:^[10]

Left paravertebral soft tissue mass, L3-L4 with epidural extension, marrow infiltration and severe canal stenosis. This may present an infectious versus malignant process. Recommend biopsy.
Mild compression deformity, L3
Grade 1 spondylolisthesis, L4 over L5
Desiccated disks, L3-L4 and L4-L5

After a biopsy of his left paravertebral soft tissue mass, it was concluded that petitioner had chronic granulomatous inflammation with necrosis or spinal tuberculosis. According to Dr. Alegre, spinal tuberculosis is a disease which originates from primary complex or tuberculosis that had been acquired from childhood, which develops over time. Thus, spinal tuberculosis is not work-related. Such finding and conclusion was reflected in the Medical Report dated August 4, 2016.^[11]

Respondents averred that the nature of petitioner's illness was properly explained to him. Since petitioner's illness was found to be non-work-related, respondents stopped giving petitioner medical assistance.^[12]

Petitioner, however, claimed that despite multiple lumbar spine injuries, respondents only addressed and evaluated the left paravertebral soft tissue mass at L3-L4. His other spinal injuries were not addressed, treated, and assessed, despite his repeated request. He, therefore, questioned respondents' decision to stop giving his medical assistance. But respondents did not respond.^[13]

At any rate, he continued to seek medical treatment for his other spinal injuries, which, according to petitioner, continued to cause him great pain. He underwent treatment at the Philippine General Hospital and personally shouldered all expenses. Due to money constraints, however, he eventually stopped seeking medical help and simply took a rest at home hoping that his condition would heal over time.^[14]

Petitioner, however, continued to suffer from severe lower back pain. Consequently, in January 2017, he was forced to consult another orthopedic specialist, Dr. Renato A. Runas (Dr. Runas). After physical examination and review of his medical records, Dr. Runas opined that petitioner's back pain is most likely caused by the displacement of the L4 vertebra over the L5. Lifting heavy objects and prolonged sitting and standing may worsen the discomfort. As a result, petitioner would no longer be able to carry out his standard duties as seaman. In fact, he is no longer fit for sea duties in any capacity.^[15]

Petitioner consequently sued respondents for total and permanent disability benefits. The parties failed to amicably settle during the conciliation and mediation conferences.^[16]

Ruling of the Labor Arbiter

By Decision^[17] dated September 5, 2017, Labor Arbiter Thomas T. Que, Jr. (Labor Arbiter Que, Jr.) granted petitioner's claim for total and permanent disability benefits, viz.:

WHEREFORE, premises considered, judgment is hereby rendered finding Complainant entitled to total and permanent disability benefits of US\$60,000[.00] and sickness allowance of \$3,000[.00], plus moral and exemplary damages of P250,000.[00] each and attorney's fees equal to 10% of the total judgment awards. Correspondingly, all herein Respondents are made jointly and severally liable to pay the same to the Complainant.

All other claims are dismissed for lack of merit.

SO ORDERED.^[18]

Labor Arbiter Que, Jr. noted the undisputed fact that prior to embarking respondents' vessel, petitioner did not show any signs of spinal tuberculosis. He only showed signs after he pulled the piston lining. His PEME even showed that he had no limitations or restrictions on fitness or any back injury. It can be deduced, then, that the cause of petitioner's illness was his strenuous work on board respondents' vessel. In any event, the touchstone of liability is not certainty, but mere possibility of work-relation.^[19]

More, Labor Arbiter Que, Jr. ruled that respondents failed to address all of petitioner's injuries. It noted that respondents altogether ignored petitioner's spinal spondylolisthesis. Respondent failed to assess and give a definite disability grading as regards this illness. By operation of law, therefore, this disability is considered

total and permanent.^[20]

Ruling of the National Labor Relations Commission (NLRC)

On appeal, NLRC reversed through its Decision^[21] dated December 18, 2017, to wit:

WHEREFORE, [premises] considered, respondents' Appeal is **GRANTED in PART**. The Decision of Labor Arbiter Thomas T. Que, Jr. dated September 5, 2017 is hereby **REVERSED and SET ASIDE**. The complaint for permanent disability compensation is **DISMISSED** for lack of merit. However, respondents Next Wave Maritime Management and/or Arnold Marquez and/or MTM Ship Management are ordered to pay complainant, jointly and severally, the Philippine Peso equivalent at the time of payment of US\$1,298.00 by way of sickness wages.

SO ORDERED.^[22]

The NLRC held that petitioner failed to present any substantial evidence to establish his claim that he sustained his spinal injuries because of his work aboard respondents' vessel. There was even no record that he indeed suffered back pain after pulling the piston lining of the ship's generator. Neither the attending physician in Africa nor the company-designated physician said anything about the alleged incident involving the piston lining. More, per the clinical discharge summary issued by St. Luke's Medical Center, petitioner had history of low back pain as early as January 2016. Thus, petitioner's back pain was a pre-existing condition. For concealing this condition, petitioner is disqualified for any compensation under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).^[23]

Nevertheless, it affirmed petitioner's entitlement to sickness wages reckoned from his repatriation on June 6, 2016 to August 4, 2016 when his condition was declared as not work-related.

In its Resolution^[24] dated January 29, 2018, the NLRC denied petitioner's motion for reconsideration.^[25]

The Court of Appeals' Ruling

In its assailed Decision^[26] dated February 10, 2020, the Court of Appeals affirmed. It held that petitioner failed to prove a reasonable connection between his work as an engine fitter and his spinal tuberculosis. Aside from his bare allegations, no competent and independent evidence was proffered to corroborate his claim. Too, as between the medical findings and conclusions of Dr. Alegre and Dr. Runas, the former must prevail as the person who monitored petitioner's condition. The declaration of Dr. Runas that petitioner was unfit to serve as a seaman in any capacity was primarily anchored on petitioner's narrative.^[27]

The Court of Appeals gave credence to the common opinion of Dr. Alegre and Dr. Runas that spinal tuberculosis originates from primary complex that travels through the spine in its dormant phase and gradually develops. Given petitioner's short service with respondents, there is basis in Dr. Alegre's findings that the infection was

already existing even prior to petitioner's deployment aboard respondents' vessel. Too, as correctly noted by the NLRC, petitioner had a history of back pain as early as January 2016.^[28]

Through its assailed Resolution^[29] dated October 2, 2020, the Court of Appeals denied petitioner's motion for reconsideration.^[30]

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays that the dispositions of the Court of Appeals be reversed and set aside.

Petitioner's Position^[31]

Petitioner asserts that he is entitled to total and permanent disability benefits. He alleges that aside from the report saying that his spinal tuberculosis was not work-related, no final and definite medical assessment was issued, hence, by operation of law, his illness is already considered total and permanent.^[32]

Too, it is undeniable that prior to boarding respondents' vessel, he was declared fit to work. He had no history of spine conditions. It is but logical to conclude, then, that his spinal injuries were sustained, or at least aggravated, by his strenuous work on board. Settled is the rule that mere probability and not the ultimate degree of certainty is the touchstone or test of proof in compensation proceedings.^[33]

The lack of specific record on the ship's logbook as regards the incident does not preclude his claims. No less than this Court ruled in past cases that the absence of any accident report does not by itself constitute competent evidence that no accident has occurred. In any case, respondents did not deny the incident that happened.^[34]

Further, Dr. Alegre and Dr. Edgardo Antonio Del Rosario (Dr. Del Rosario), being both general surgeons, have no specialized knowledge on his condition. Their assessment, therefore, is inconclusive.^[35]

Respondents' Position^[36]

In their Comment dated March 12, 2021, private respondents maintain that petitioner cannot claim disability benefits. They emphasize that petitioner was diagnosed with tuberculosis of the spine which is different from pulmonary tuberculosis. Petitioner's disease is a reactivation of a latent tuberculosis infection from childhood, thus, is not work-related. The illness being not work-related, the same is not compensable.^[37] Too, there was no proof that petitioner sustained his lower back concerns while he was working on board respondents' vessel. To be sure, petitioner did not present any accident report which would support his claim of the events allegedly leading to his spinal disease.^[38] More, despite his illness not being workrelated, the company even accorded him three (3) months treatment and paid him sickness allowance during that period. They, therefore, should not be made to