

FIRST DIVISION

[G.R. No. 217431, February 19, 2020]

**PACIFIC OCEAN MANNING, INC. AND/OR INDUSTRIA
ARMAMENTO MERIDIONALE AND/OR CAPT. AMADOR P.
SERVILLON, PETITIONERS, VS. ROGER P. SOLACITO,
RESPONDENT.**

DECISION

CAGUIOA, J:

This is a Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court assailing the Decision^[1] dated June 20, 2014 and Resolution^[2] dated March 13, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 123284, which annulled and set aside the Decision^[3] dated September 23, 2011 and Resolution^[4] dated December 19, 2011 of the National Labor Relations Commission (NLRC) in NLRC Case No. LAC 01-000098-11.

Facts of the Case

The facts of the case, as narrated by the CA, are as follows:^[5]

Petitioner Pacific Ocean Manning, Inc. hired respondent Roger P. Solacito (Solacito) as an Able Seaman on board M/V Eurocardo Salerno on behalf of its principal, petitioner Industria Armamento Meridionale. He had a contract for eight months with a basic monthly salary of \$563.00.

Solacito was deployed on March 22, 2009 after being declared fit to work following his pre-employment medical examination (PEME). As an able seaman, Solacito was expected to do routine chores including pirate watch duty during the night.

Solacito alleged that while he was on pirate watch on the night of June 10, 2009, an insect entered and lodged itself inside his left ear which caused pain, itchiness, and dizziness. He tried to remove it with his fingers but failed. The pain and irritation persisted for several days. Thus, on June 18, 2009, Solacito was off-boarded at the nearest port for treatment. He was treated and diagnosed with *otite externa* at the Clinica da Climed in Luanda, Africa. When his condition did not improve, he was again off-boarded for treatment in a Moroccan hospital, and then at a clinic in Leixoes, Portugal, where he was advised to be medically repatriated for treatment.

Solacito was repatriated on July 3, 2009, and was referred to Vizcarra Diagnostic Center for examination and treatment by the company-designated physician on July 9, 2009. The company-designated physician diagnosed him with an ear infection which became aggravated chronic *otitis media*. He was given medication and recommended for surgery.

On October 13, 2009, Solacito underwent a surgical procedure at St. Luke's Medical Center. Interim medical reports with respect to his treatment and recovery were

issued on October 28, 2009, November 16, 2009, and January 5, 2010. On January 7, 2010, Dr. Elizabeth Tan-Tin (Dr. Tan-Tin) issued a Medical Report finally declaring Solacito fit to work, viz.:

Presently, there is a small perforation but tympanic membrane and middle ear are dry. No signs of infection. So far, there is good control of rhinitis. He has reached maximum stage of cure and has been declared FIT FOR SEA DUTY as of January 7, 2010. For your information. Elizabeth Tan-Tin, MD Chief of Clinics. [6]

On February 10, 2010, Dr. Frederick Hawson, the attending ear-nose-throat (ENT) consultant, and Dr. Tan-Tin prepared another medical report which states:

This is to certify that Mr. Roger Solacito had first been seen by the ENT service in Vizcarra Diagnostic Clinic last July 9, 2009. The chief complaint was recurrent left ear discharge since June 10, 2009. On first consultation, the patient had been diagnosed to have chronic otitis media with a near total tympanic membrane perforation on the left ear. Various medications had been given to the patient with only temporary relief afforded as the discharge would still be appearing intermittently. Finally, on October 13, 2009, the patient underwent a surgical procedure called Tympanoplasty and Ossiculoplasty on the left ear, done at the St. Luke's Medical Center, under surgeon Dr. Norberto Martinez. At present the left ear is already dry.

The latest pure tone audiometry was done last December 14, 2009 at the Manila Hearing Aid Center (SM-Mall of Asia Branch). The results show that his right ear had an average hearing level of 25 dB, while the left ear had an average hearing level of 50 dB. The speech discrimination score for both ears is 100%.

Mr. Solacito is not considered disabled because he does not fulfill the WHO definition of hearing disability, which is that the average hearing level of the BETTER ear should not be lower than 40dB. Since the right ear of Mr. Solacito, which is the better ear, had an average level of 25 dB, is within normal limits, there is no disability in this case.

Furthermore, in the Dept. of Health memorandum entitled Administrative Order 2007-0225, it is stated that for servicing seafarers, unaided average threshold shall not be higher than 50dB in BOTH ears. His functional speech discrimination (unaided SRT) shall not be less than 90% at 55 dB for BOTH ears. Mr. Solacito's left ear hearing level is at 50 dB. His hearing in the right ear is within normal limits. The speech discrimination score for both ears is 100%.

Therefore, based on his latest hearing evaluation as compared to established criteria, Mr. Solacito does not have hearing disability. His moderate hearing loss at the level of 50 dB on the left ear is a hearing impairment and may affect certain aspect of his job description. But overall as far as hearing is concerned he should still be FIT TO WORK as a seafarer. [7]

In January 2010, Solacito filed a complaint for total and permanent disability benefits, sickness pay for three months and 10 days, moral and exemplary

damages, attorney's fees, and other benefits under the law.^[8]

On March 18, 2010, Solacito consulted Dr. Manuel C. Jacinto, his personal physician, who issued a Medical Certificate which states:

This is to certify that Roger P. Solacito Age 30, Sex Male, Status Single, Citizenship Filipino, Occupation Seafarer of Pacific Ocean Manning Inc., was admitted at Sta. Teresita General Hospital QC and was under my service during the period from March 2010 for the following diagnosis: Perforation of LEFT eardrum S/P Tympanoplasty (Oct 13, 2009). Surgical Intervention Tympanoplasty (L) & ossoculoplasty. Patient's condition on discharge: no improvement. Remarks: The patient was advised to be Physically Unfit to go back to work as a seafarer in any capacity because of hearing loss (L) ear. Disability [_/] Total Permanent.^[9]

Ruling of the Labor Arbiter

In a Decision^[10] dated August 23, 2010, the Labor Arbiter (LA) ruled in favor of Solacito and awarded him total and permanent disability benefits in accordance with the Collective Bargaining Agreement (CBA) in the amount of \$89,100.00 and attorney's fees equivalent to 10% of the total monetary award.

The LA held that the independent medical assessment of Solacito's personal physician must be upheld as accurate, fair, and neutral medical assessment considering the absence of any special relationship between said physician and Solacito other than a doctor-patient relationship. On the other hand, the medical assessment of the company-designated physicians expectedly downplayed Solacito's *chronic otitis* which was undisputedly caused by his perforated eardrum and which resulted to hearing loss. The LA further stated that no employer would rehire Solacito knowing that his hearing is permanently impaired because he could no longer be assigned to watch keeping tasks which require a fully functional sense of hearing. Moreover, the LA held that Solacito is totally and permanently disabled since he was unable to perform his job for more than 120 days from repatriation.

The dispositive portion of the LA Decision reads:

WHEREFORE, premises considered, judgment is entered **FINDING** respondents **PACIFIC OCEAN MANNING INC.** (*Respondent/ local Agency*) and/or **INDUSTRIA ARMANENTO MERIDIONALE**, (*Respondent/Principal Abroad*), **CAPT. AMADOR P. SERVILLON** (*Other respondent*) jointly and severally liable to pay complainant Roger P. Solacito's permanent and total disability benefits to (*sic*) under the parties Collective Bargaining Agreement, **ORDERING** thus said named respondents in said joint and several capacities to pay complainant Roger P. Solacito:

- 1) Permanent total disability benefits of US\$89,100.00 at its peso equivalent at the time of actual payment; and
- 2) Attorney's fees often percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.

Other claims of complainant are dismissed for lack of merit and/or failure to substantiate.

SO ORDERED.^[11]

Aggrieved, petitioners filed a memorandum of appeal with the NLRC.

Ruling of the NLRC

In a Decision dated September 23, 2011, the NLRC affirmed the findings of the LA but reduced the award of total and permanent disability benefit to \$60,000.00.

The NLRC concurred with the LA that the medical assessment made by Solacito's personal physician must prevail over that of the company-designated physicians. The NLRC likewise stated that no maritime company aware of Solacito's ear problem will likely hire him considering that the duties of an able seaman do not only entail an almost perfect eyesight but also superior sense of hearing. However, the NLRC found that Solacito's contract of employment was executed more than two months after the expiration of the CBA. Thus, the total and permanent disability benefits due to Solacito should be based on the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).

The dispositive portion of the NLRC Decision reads as follows:

WHEREFORE, the appealed Decision is **AFFIRMED**, with the **MODIFICATION** that complainant-appellee Roger P. Solacito is entitled to the amount of US\$60,000.00 only as permanent and total disability compensation.

SO ORDERED.^[12]

Both parties sought reconsideration of the NLRC Decision, but their motions were denied in a Resolution dated December 19, 2011. Thus, petitioners filed a petition for *certiorari*^[13] before the CA.

Ruling of the Court of Appeals

The CA granted the petition for *certiorari* in a Decision dated June 20, 2014 and instead awarded permanent partial disability benefits to Solacito, *viz.*:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered **GRANTING** the petition for *certiorari* filed in this case, **ANNULLING** and **SETTING ASIDE** the Resolution dated December 19, 2011 and the Decision dated September 23, 2011 issued by the respondent National Labor Relations Commission, and **ORDERING** Solacito to return to the petitioners the equivalent in Philippine pesos of the amount of US\$54,775.00 and to report his compliance within ten (10) days from the finality of this Decision. No costs.

SO ORDERED.^[14]

According to the CA, the NLRC acted with grave abuse of discretion when it upheld the medical assessment of Solacito's personal physician over that of the company-designated physicians. The CA explained that under the POEA-SEC and prevailing jurisprudence, the medical assessment of the company-designated physicians should be recognized when the seafarer, as in this case, did not submit himself to the assessment of a third doctor. The CA further held that under the POEA-SEC, Solacito is not entitled to Grade 1 disability benefit for he is not suffering complete

loss of his sense of hearing in both ears. The CA also dismissed, as being purely speculative and unsupported by evidence, NLRC's conclusion that Solacito will no longer be able to work as an able seaman.

However, the CA held that Solacito is suffering *permanent and partial disability* with a Grade 12 disability rating. According to the CA, Solacito's disability has become *permanent* because his disability lasted for more than 120 days from his repatriation, and the company-designated physician declared him fit to work after more than 240 days. Yet, his permanent disability could not be considered total in nature. The CA explained that, considering that a Grade 11 assessment is given for the total loss of the sense of hearing in one ear, then, the logical assessment for partial hearing loss in one ear is Grade 12. Thus, the CA found Solacito entitled to the disability benefits corresponding to a Grade 12 disability rating, or \$5,225.00. Since petitioners already paid the total award amounting to P2,722,000.00 as well as execution fees amounting to P27,220.00, petitioners are thus entitled to the return of the money they paid less \$5,225.00, or \$54,775.00.

The parties respectively filed motions for reconsideration of the CA Decision. Meanwhile, petitioners also filed a manifestation^[15] submitting additional evidence which showed that Solacito was subsequently re-deployed through another manning agency. Both motions for reconsideration were, however, denied in a Resolution dated March 13, 2015. Hence, this Petition.

Issues

The present Petition raises the following issues:

1. Whether the CA erred in finding Solacito suffering from *permanent and partial disability*; and
2. If the Court finds Solacito *permanently and partially* disabled, whether the CA erred in the calculation of the amounts due to be returned to petitioners.

The Court's Ruling

Before delving into the main issues, the Court first disposes of the procedural matters brought up by Solacito.

In his Comment,^[16] Solacito maintains that the NLRC Decision had already become final and executory — and, therefore, immutable — despite the pendency of the petition for *certiorari* before the CA. Solacito also argues that the petition for *certiorari* before the CA should have been deemed abandoned or rendered moot and academic following petitioners' voluntary settlement of the judgment award during the pre-execution proceedings. Thus, the CA erred in giving due course to the petition and modifying the NLRC Decision.

This contention is erroneous. Under the Labor Code, the decision of the NLRC shall become final and executory after 10 days from notice *if* no appeal is taken therefrom within said period.^[17] It is settled that the aggrieved party may still seek reconsideration of the decision of the NLRC, and then seasonably avail itself of the special civil action of *certiorari* under Rule 65.^[18] Here, as shown by the records, petitioners timely filed a motion for reconsideration of the NLRC Decision and a petition for *certiorari*. Thus, the NLRC Decision is not yet immutable.