

## SECOND DIVISION

[ G.R. No. 244721, February 05, 2020 ]

**JOLLY D. TEODORO, PETITIONER, VS. TEEKAY SHIPPING  
PHILIPPINES, INC., RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated August 24, 2018 and the Resolution<sup>[3]</sup> dated February 8, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 153637 which affirmed with modifications the Decision<sup>[4]</sup> dated August 16, 2017 of the Panel of Voluntary Arbitrators (PVA), National Conciliation and Mediation Board (NCMB), Department of Labor and Employment (DOLE), granting petitioner Jolly D. Teodoro (petitioner) partial and permanent disability benefits only and deleted the award of attorney's fees.

#### The Facts

On February 17, 2015, petitioner was hired as Chief Cook by respondent Teekay Shipping Philippines, Inc. (TSPI), for its principal, Teekay Shipping Limited (TSL), on board the vessel M.T. Al Marrouna for a period of eight (8) months, with such being covered by a Contract of Employment<sup>[5]</sup> and a Collective Bargaining Agreement<sup>[6]</sup> (CBA) between TSPI, on behalf of TSL, and the Philippine Seafarers' Union (PSU) - ALU TUCP.<sup>[7]</sup> After undergoing the required pre-employment medical examination, petitioner was declared fit for duty<sup>[8]</sup> by the company-designated physician notwithstanding the former's declaration of Dyslipidemia and diabetes mellitus. For this reason, petitioner was made to sign an Affidavit of Undertaking<sup>[9]</sup> relative to his health condition before boarding the vessel on March 14, 2015.<sup>[10]</sup>

On June 30, 2015, the ship arrived at the port of Fujairah, United Arab Emirates, to get its food supplies. Petitioner claimed that aside from preparing meals for the officers and crew, he also assisted in hauling the food provisions from the upper deck of the ship to its reefer where the food items were frozen and stored at the meat and fish rooms, respectively. Because of the sudden extreme changes in temperature from the upper deck to the freezer during the hauling and storage process, petitioner experienced a fever-like symptom with body pain and blindness in his left eye the following day.<sup>[11]</sup> He was brought to a hospital in India where he was diagnosed with "Left Eye Endophthalmitis with Orbital Cellulitis;" subsequently, he was repatriated on July 10, 2015 for further medical treatment.<sup>[12]</sup>

Upon arrival in Manila, petitioner was referred to a company-designated physician at the Ship to Shore Medical Assist and his condition was confirmed.<sup>[13]</sup> He was admitted at Medical City where he was given intravenous antibiotics and subjected

to visual acuity testing, orbital CT scan and B scan ultrasound, and other laboratory examinations to monitor his eye ailment.<sup>[14]</sup> He was found to have "Idiopathic Orbital Inflammatory Disease, Left Eye; Retinal Detachment, Left Eye; Panuveitis, Left Eye; Dacryoadenitis, Left Eye," and thereafter, referred to the Marine Medical Services for further evaluation and treatment.<sup>[15]</sup>

In a Medical Report<sup>[16]</sup> dated November 3, 2015, the company designated physician explicated that petitioner's eye condition may have been triggered by his diabetes mellitus which, in addition to lack of sleep or inadequate rest, impaired his immune system, thus, making his body susceptible to infections. Hence, it was not work-related. Moreover, petitioner's visual prognosis and recovery were found to be poor due to the permanent loss of vision in one eye despite medications, and as such, he was declared to be unfit for further sea duties.<sup>[17]</sup> He was also advised to wear polycarbonate glasses to avoid further infection and was recommended to be fitted with scleral shell prosthesis to support his left eye, which, however was temporarily deferred. For this reason, the company-designated physician declared petitioner to have already reached his maximum medical improvement and suggested a disability rating of Grade 7 or total loss of vision in one eye.<sup>[18]</sup> Notwithstanding, petitioner returned for re-evaluation on November 24 and 25, 2015, wherein no noticeable changes in his condition have been observed.<sup>[19]</sup>

Considering that there was permanent loss of vision in his left eye resulting in his unfitness to work as declared by his attending specialist,<sup>[20]</sup> and since he was no longer advised by TSPI to return for further consultations in view of the company's alleged policy on a 130-day limit liability only,<sup>[21]</sup> petitioner demanded<sup>[22]</sup> from TSPI the payment of disability benefits pursuant to the CBA, which the latter refused. This prompted petitioner to raise his grievance before the Philippine Seafarers' Union, which likewise resulted in a deadlock.<sup>[23]</sup> Consequently, petitioner filed a complaint for disability benefits against TSPI, its President Alex N. Verchez (Verchez), and its foreign principal, TSL, with the NCMB, DOLE, docketed as MVA-028-RCMB-NCR-160-12-08-2016.<sup>[24]</sup>

In its defense, TSPI asserted that petitioner did not suffer from a work-related illness, claiming that his eye condition was highly attributed to his pre-existing diabetes mellitus and that it was also aggravated by his own failure to take his prescribed medications.<sup>[25]</sup> It denied that petitioner's illness was brought about by the working conditions on board the vessel, contending that the ship was seaworthy at all times and conducive to work, and that petitioner was well aware of the safety items installed in his work area.<sup>[26]</sup> It also argued that petitioner breached his duties under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) when he abandoned his treatment by not showing up for his scheduled re-evaluation on December 15, 2015 and effectively preventing the company-designated physician from arriving at a proper disability grading as required by law. Lastly, it denied the other monetary claims for lack of factual and legal bases.<sup>[27]</sup>

### **The PVA Ruling**

In a Decision<sup>[28]</sup> dated August 16, 2017, the PYA ruled in favor of petitioner,

ordering TSPI, Yerchez, and TSL to jointly and severally pay him US\$89,100.00 representing total and permanent disability benefits, as well as ten percent (10%) attorney's fees.<sup>[29]</sup>

In so ruling, the PYA held that petitioner's eye condition was not caused by or associated with his diabetes mellitus, and that he did not abandon his treatment. On the contrary, the PYA held that TSPI was negligent in failing to provide a safe place to work and appropriate equipment to their workers to avoid all kinds of dangers and illnesses. On this score, it was pointed out that TSPI's personnel were exposed to extreme temperatures without the proper protective clothing, thus, creating a more dangerous work environment that resulted to petitioner's permanent blindness in the left eye and his incapacity to resume the same line of work. Consequently, even if petitioner suffered blindness in only one eye, the CBA deems his disability as total and permanent, entitling him to US\$89,100.00. The PYA also awarded ten percent (10%) attorney's fees since petitioner was compelled to litigate to protect his rights and interest. All other claims were dismissed for lack of merit.<sup>[30]</sup>

Aggrieved, TSPI moved for reconsideration,<sup>[31]</sup> which the PYA denied in a Resolution<sup>[32]</sup> dated October 25, 2017. Hence, the matter was elevated to the CA *via* a petition for review<sup>[33]</sup> pursuant to Rule 43 of the Rules of Court.

### **The CA Ruling**

In the assailed Decision<sup>[34]</sup> dated August 24, 2018, the CA partly granted TSPI's petition declaring petitioner entitled to partial and permanent disability benefits only, or Grade 7 disability as assessed by the company-designated physician, and deleted the award of attorney's fees.<sup>[35]</sup> While the CA sustained the finding that there was no medical abandonment given that no further medical treatment can be done to save petitioner's left eye except the improvement of his physical appearance, and that TSPI failed to disprove the presumption of work-relatedness of petitioner's illness, it nonetheless held that the loss of vision in one eye is equivalent to Grade 7 disability only under the POEA-SEC. The CA also found no basis in awarding petitioner attorney's fees, holding that there was no bad faith or malice on the part of TSPI.<sup>[36]</sup>

Petitioner's motion for reconsideration<sup>[37]</sup> was denied in a Resolution<sup>[38]</sup> dated February 8, 2019; hence, the present petition.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA committed reversible error in awarding petitioner partial and permanent disability benefits only and in deleting the award of attorney's fees.

### **The Court's Ruling**

The petition is granted.

Preliminarily, petitioner argues that the CA should not have entertained TSPI's appeal before it since: (1) the PYA decision had already become final and executory

considering the lapse of the ten (10)-day period from receipt of the copy of the award or decision by the parties; and (2) in any event, the petition was not timely filed because it was not sent to his counsel of record. However, records show that petitioner never advanced these issues before the CA despite receipt of TSPI 's Manifestation<sup>[39]</sup> explicating that the petition was inadvertently served to a different counsel and that the same was immediately rectified by sending a copy of the same to petitioner's counsel of record by personal service. In fact, petitioner did not submit<sup>[40]</sup> any comment to the petition notwithstanding receipt<sup>[41]</sup> of the CA's directive to do so, nor raised the issues in his motion for reconsideration.<sup>[42]</sup> Having failed to bring up the matter before the CA, the latter cannot be faulted in giving due course to the petition.

This notwithstanding, the Court nonetheless finds that the CA erred in modifying the PVA Decision when it held that petitioner is entitled only to partial and permanent disability benefits and in deleting the award of attorney's fees.

It is doctrinal that the entitlement of seamen on overseas work to disability benefits is a matter governed not only by medical findings but by law and contract. The pertinent statutory provisions are Articles 197 to 199<sup>[43]</sup> of the Labor Code in relation to Section 2 (a), Rule X of the Rules implementing Title II, Book IV of the said Code, while the relevant contracts are the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; the parties' CBA, if any; and the employment agreement between the seafarer and his employer.

In this case, petitioner entered into a contract of employment with TSPI in accordance with the 2010 POEA-SEC which, as borne from the records, was covered by an overriding IBF-PSU TCC Agreement<sup>[44]</sup> (CBA) that was effective from February 20, 2014 to February 19, 2016. During the course of his employment and while in the performance of his duties on board the vessel M.T. Al Marrouna, petitioner complained of sudden blindness in his left eye, among others. He was later diagnosed to have Left Eye Endophthalmitis with Orbital Cellulitis that caused his repatriation on July 10, 2015, or during the effectivity of the CBA, and resulted to permanent loss of vision in one eye which rendered him unfit for further sea duties.

Under Section 20 (A) of the 2010 POEA-SEC, the employer shall be liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." Here, while petitioner's diagnosed condition is not among the listed occupational diseases under Section 32-A of the 2010 POEA-SEC, Section 20 (A) (4) nonetheless states that "[t]hose illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." Thus, the burden is on the employer to disprove the work-relatedness, failing which, the disputable presumption that a particular injury or illness that results in disability is work-related stands. Unfortunately, the said presumption was not overturned by TSPI. Moreover, the Grade 7 disability rating assessment by the company-designated physician negates any claim that the non-listed illness is not work-related.<sup>[45]</sup>

Accordingly, having suffered a work-related illness in the course of his last employment contract, the 2010 POEA-SEC imposes upon the company-designated physician the responsibility to arrive at a **definite assessment** of the seafarer's fitness to work or degree of disability within a period of 120 days from repatriation.

[46] During the said period, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-SEC and by applicable Philippine laws. However, if the 120-day period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[47] Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods, and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.[48]

In the case at bar, TSPI contended that petitioner abandoned his medical treatment when he failed to return for his scheduled follow-up check-up on December 15, 2015 that effectively prevented the company-designated physician from arriving at a definite assessment, which is in breach of his obligation under the POEA-SEC. However, as correctly pointed out by the CA, there was no medical abandonment on the part of petitioner given that the company-designated physician, in the confidential medical report dated November 3, 2015, had already declared the former to have "*already reached his maximum medical improvement[,]*"[49] thus, indicating his treatment through curative means to have already ended and that the subsequent check-ups were for the improvement of his physical appearance by means of fitting a scleral shell prosthesis. The said medical report also recommended a Grade 7 disability rating based on the specialist's finding that petitioner's visual prognosis and recovery were poor due to "*permanent loss of vision in one eye despite intravenous antibiotic and steroids as well as oral medications given[,]*" thus rendering him "*unfit for further sea duties.*"[50]

Considering that: (1) in the November 3, 2015 medical report, which was issued within the 120-day treatment period, the company-designated physician already gave petitioner a partial and permanent disability rating of Grade 7, *i.e.*, loss of vision or total blindness in one eye, and declared him to have already reached his maximum medical improvement, rendering him unfit for further sea duties; and (2) during petitioner's subsequent check-ups on November 24 and 25, 2015, respectively, the company-designated physician did not find any significant improvement in his condition, it is evident that there was no need for further medical treatment and he cannot be faulted for his failure to appear on his scheduled check-up session on December 15, 2015 nor can such be construed as abandonment. Besides, his attending specialist at Medical City likewise confirmed the permanent loss of vision in petitioner's left eye.[51]

Notably, while the company-designated physician assessed petitioner only a partial and permanent disability rating of Grade 7 in accordance with the POEA-SEC, the latter was nonetheless also found to be unfit for further sea duties. In *Kestrel*