

# FIRST DIVISION

[ G.R. No. 239055, March 11, 2020 ]

**RICHIE P. CHAN, PETITIONER, VS. MAGSAYSAY CORPORATION,  
MARITIME CORPORATION, CSCS INTERNATIONAL NV AND/OR  
MS. DORIS HO, RESPONDENTS.**

## D E C I S I O N

**LAZARO-JAVIER, J.:**

### The Case

This Petition for Review on Certiorari<sup>[1]</sup> seeks to reverse the Decision dated June 29, 2017<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 141340 holding that petitioner was only entitled to Grade 10 Disability Benefits.

### Antecedents

Petitioner Richie P. Chan sued respondents Magsaysay Maritime Corporation, CSCS International N/V and/or Ms. Doris Ho for permanent total disability benefits, moral and exemplary damages, and attorney's fees. On November 19, 2012, Magsaysay Maritime Corporation, in behalf of its principal CSCS International NV engaged his services as fireman on board *Costa Voyager-D/E*. On November 25, 2012, he boarded the vessel. On April 2013, he felt severe pain after he slipped and hit his right knee on the deck during a regular boat drill.<sup>[3]</sup> He was initially treated at the ship's hospital, given pain medication, and advised to rest. Sometime in the first week of May 2013, his right knee got swollen and he could hardly walk and sleep. On May 8, 2013, he was brought to a hospital in Turkey and given pain medication. As he could no longer work, he was repatriated on May 13, 2013.<sup>[4]</sup>

Upon his return to the country, he reported to respondents' office and was referred to the company-designated physician at the Marine Medical Center.<sup>[5]</sup> He was diagnosed with gouty arthritis with meniscal tear (right knee) and advised to undergo surgery. But since he refused surgery, he was further advised to take medication and rehabilitation instead. On June 24, 2013, he requested more time to decide whether or not to go through surgery.<sup>[6]</sup>

On July 11, 2013, the company-designated physician issued Disability Grade 10. Meantime, he was provided further therapy and medication. On August 16, 2013, the company-designated physician noted he had attained maximum medical cure and was given a final assessment of Disability Grade 10.<sup>[7]</sup>

On August 17, 2013, he manifested his decision to undergo surgery which

respondents agreed to provide. He was admitted for surgery on August 27, 2013 or three (3) months after repatriation. Despite the surgery, his condition did not improve. On October 29, 2013, the company-designated physician noted that he had already attained maximum medical cure with Grade 10 Disability,<sup>[8]</sup> thus:

October 29, 2013

ROBERT D. LIM, MD  
Marine Medical Services  
Metropolitan Medical Services

Re Mr. Richie Chan

Follow-up on 36 y/o male, S/P Arthroscopic Pattial Meniscectomy, Right Knee. Gouty Arthritis is not work-related.

Medical Meniscal Tear may be secondary to trauma, wear and tear, can be work-related.

Patient has already reached maximum medical improvement.

Disability grade remains at Grade 10.

Thanks.

Respectfully yours,

WILLIAM CHUASUAN, JR. MD  
Lic. No. 95270<sup>[9]</sup>

Due to persistent pain even after surgery and respondents' continued silence on whether he could resume his seafarer duties, he consulted an independent medical expert who, after a series of examinations, issued a Medical Report dated January 6, 2014, declaring him unfit for sea duty due to persistent pain on the knee, swelling, and limited movement. Thereafter, he asked respondents for total permanent disability benefits but to no avail.<sup>[10]</sup>

On the other hand, respondents countered that Chan had no cause of action since he failed to follow the procedure in contesting the findings of the company-designated physician. Chan had prematurely filed the complaint without seeking a second opinion from the physician of his own choice. Thus, any medical document that Chan may have later submitted would only be a mere afterthought for the sole purpose of claiming total disability benefits. Too, Chan's delayed treatment which exceeded one hundred twenty (120) days should be attributed to him as he himself requested more time to decide whether to undergo surgery. Assuming Chan was entitled to disability benefits, it should be limited to Grade 10 disability as assessed

by the company-designated physician. Chan is not entitled to damages and attorney's fees as respondents were never in bad faith in dealing with him. Lastly, respondent Ms. Doris Ho should be dropped as party respondent since Chan had no employer-employee relationship with her.

### **The Labor Arbiter's Ruling**

By Decision dated January 30, 2015, Labor Arbiter Vivian H. Magsino-Gonzales ruled in Chan's favor. The labor arbiter found that Chan was not informed of the company-designated physician's final assessment even after the lapse of two hundred forty (240) days from medical repatriation. Chan, therefore, was left with no other alternative but to consult an independent physician to evaluate his medical condition.<sup>[11]</sup> The labor arbiter awarded total permanent disability benefit based on the POEA Contract but denied the other claims for lack of basis, thus:

**WHEREFORE,** foregoing considered, judgment is hereby rendered ordering respondents MAGSAYSAY MARITIME CORPORATION/C.S.C.S. INTERNATIONAL NV to jointly and severally pay complainant, the sum of US\$60,000.00 or its peso equivalent prevailing at the time of payment.

All other claims are dismissed.

**SO ORDERED.**<sup>[12]</sup>

### **The NLRC's Ruling**

On appeal, the NLRC affirmed with modification awarding attorney's fees to Chan. The NLRC subsequently denied respondents' motion for reconsideration.<sup>[13]</sup>

### **The Court of Appeals' Ruling**

By Decision dated June 29, 2017, the Court of Appeals reduced the award to Grade 10.

It held that Chan disregarded the conflict resolution procedure under the POEA-SEC when he did not refer the conflicting findings on the extent of his disability to a third doctor. For this reason, the findings of the company designated physician must prevail. Too, the Court of Appeals held that the seafarer's incapacity to work after the lapse of more than one hundred twenty (120) days from the time he suffered an injury and/or illness is not a magical incantation that automatically warrants the grant of total and permanent disability benefits in his favor since jurisprudence has extended this period to two hundred forty (240) days. Only one hundred sixty-nine (169) days passed from Chan's repatriation for medical treatment on May 13, 2013 until the company-designated physician gave him a Grade 10 rating on October 29, 2013.

The Court of Appeals denied Chan's motion for reconsideration.<sup>[14]</sup>

### **The Present Petition**

Chan now seeks<sup>[15]</sup> affirmative relief from the Court and prays that the assailed dispositions of the Court of Appeals be reversed and a new one rendered reinstating the NLRC's Resolution dated April 10, 2015.

He first argues that he is not duty bound to avail of the conflict resolution procedure under Section 20-B(3) of the POEA-SEC since respondents deliberately refused to furnish him a copy of the company designated physician's final assessment after his medical treatment was discontinued. As a result, he was deemed totally and permanently disabled by operation of law. The Grade 10 assessment issued him on October 29, 2013 cannot be the final assessment within the contemplation of law.

He next asserts that the final assessment attached to respondents' position paper was not compliant with law and jurisprudence. There was no categorical declaration of his fitness to work as seafarer despite the Grade 10 assessment issued by the company-designated doctor. There was no discussion either on the implication on his capacity to return to work as seafarer.

Lastly, Grade 2 to 14 (POEA-SEC) assessments must include a certification that the seafarer remains fit to work as seafarer, otherwise, it can only be considered as an interim assessment. Here, there was no such definitive assessment from the company-designated physician.<sup>[16]</sup>

On the other hand, respondents counter that Chan's Grade 10 disability was already assessed not once but twice, first on August 16, 2013 prior to his surgery, and second, on October 29, 2013 after his surgery. Also, the complaint was prematurely filed without seeking a second or third opinion. It was only when Chan filed his position paper that he belatedly presented a medical report issued by his alleged physician of choice, Dr. Runas. Thus, at the time the complaint was filed, petitioner did not as yet consult any personal physician for his disability assessment. In any event, the two (2) conflicting medical findings were not referred to a third doctor, hence, the findings of the company-designated physician pertaining to his Grade 10 disability must prevail.<sup>[17]</sup>

### **Issues**

1. Is the October 29, 2013 medical assessment of the company designated physician complete, final and definite?
2. Is referral to a third doctor mandatory?
3. Is petitioner entitled to total and permanent disability benefits?

### **Ruling**

To begin with, this Court is not a trier of facts, hence, only questions of law may be raised in a petition for review on *certiorari* under Rule 45. In the exercise of its power of review, the factual findings of the Court of Appeals are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. It is a recognized exception, however, that when the Court of Appeals' findings are contrary to those of the NLRC and the labor arbiter, as in this case, there is a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.<sup>[18]</sup>

The employment of seafarers is governed by the contracts they signed at the time of their engagement. So long as the stipulations in these contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While 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.<sup>[19]</sup>

Here, petitioner's employment is governed by law, the contract he executed with respondents on November 19, 2012, and the POEA-SEC.<sup>[20]</sup> Section 20(A) of the POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, sets the procedure for disability claims of seafarers, to wit:

x x x      x x x      x x x

## 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:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
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-