

## THIRD DIVISION

[ G.R. No. 238933, July 01, 2020 ]

**JOEY RONTOS CLEMENTE, PETITIONER, VS. STATUS MARITIME CORPORATION, BEKS DEMI ISLETMECILIGI VE TICARET A.S., AND/OR LOMA B. AGUIMAN, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

For this Court's resolution is a Petition for Review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals which affirmed the decisions of the National Labor Relations Commission and Labor Arbiter, disqualifying Joey Rontos Clemente from claiming disability benefits under the POEA Standard Employment Contract.

On August 7, 2015, Joey Rontos Clemente (Clemente) was hired by Status Maritime Corporation (Status Maritime) as a fitter on behalf of Beks Gemi Isletmeciligi Ve Ticaret A.S. and its owner, Loma B. Aguiman.<sup>[4]</sup> The terms of employment were as follows:

Duration of Contract:	9+3 MONTHS UPON MUTUAL
Position:	CONSENT OF BOTH PARTIES
Basic Monthly Salary:	FITTER
Fixed Overtime/103 Hrs.	US\$735.20
Monthly:	US\$546.40
Hours of Work:	48 HOURS/WEEK
Leave Pay:	US\$171.55
Leave Subject:	US\$100.80
Owner's Bonus/Extra O.T.	US\$264.05
Over and Above 103 Hrs.:	
Point of Hire:	MANILA, PHILIPPINES
O.T/Hour:	US\$5.30
CBA. if any:	NONE <sup>[5]</sup>

Before boarding the vessel, Clemente underwent pre-employment medical examination and was declared fit to work.<sup>[6]</sup>

On March 25, 2016, Clemente's shoulder snapped and was dislocated while he was allegedly lifting a heavy object. He was repatriated and recommended for surgical repair after being diagnosed with recurrent left shoulder dislocation.<sup>[7]</sup>

Immediately after repatriation, Clemente reported to Status Maritime, which referred him to the company designated physician who advised him to undergo MRI. However, Status Maritime later disapproved the procedure and rejected Clemente's sickness allowance claim.<sup>[8]</sup>

Clemente then consulted Dr. Misael Ticman (Dr. Ticman). After undergoing MRI, Clemente was diagnosed with "Rotator cuff tear (Supraspinatus), left shoulder." Dr. Ticman concluded that his condition is a permanent disability and declared him "unfit to work" as a seafarer.<sup>[9]</sup>

On June 16, 2016, Clemente filed a complaint for permanent total disability before the Labor Arbiter.<sup>[10]</sup> He claimed disability benefits amounting to US\$60,000.00, as well as P1,000,000.00 for moral damages, P200,000.00 for exemplary damages, and attorney's fees.<sup>[11]</sup>

For its part, Status Maritime maintained that Clemente is not entitled to disability benefits because he fraudulently concealed his history of shoulder dislocation.<sup>[12]</sup>

Status Maritime alleged that Clemente disclosed to his crewmates that he had shoulder dislocations twice in the past. According to Ken Steven Lachica (Lachica), one of Clemente's crewmates, he was playing billiards with Clemente when the latter asked for help as he could not move his left shoulder. Jose Lancheta (Lancheta) also claimed that when the therapist came to relocate Clemente's shoulder, he told him about having shoulder dislocations even before boarding the vessel. Volkan Jose (Jose) likewise testified that Clemente told him about his history of shoulder dislocation.<sup>[13]</sup>

Status Maritime further claimed that Clemente admitted it was his third episode of shoulder dislocation when he was diagnosed by Dr. Ruben Raj Selvarajah (Dr. Selvarajah) abroad. Hence, when Clemente was repatriated, Status Maritime discontinued his treatment after discovering the fraudulent concealment. Moreover, Status Maritime maintained that Clemente's injury is not work-related.<sup>[14]</sup>

The Labor Arbiter dismissed the complaint and ruled that Clemente is not entitled to disability benefits.<sup>[15]</sup> The dispositive portion of the Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered DISMISSING the complaint for disability benefits for lack of merit.

All other claims are likewise dismissed for lack of merit.

SO ORDERED.<sup>[16]</sup> (Emphasis in the original)

The Labor Arbiter found that Clemente's injury was not work-related because it was acquired before the duration of the contract as evidenced by Clemente's medical records which stated that he suffered the same injury twice—in June and July 2015.<sup>[17]</sup>

Moreover, the Labor Arbiter reasoned that Clemente failed to show how the nature of his work aggravated or contributed to his injury. Even assuming that his injury is compensable under POEA Standard Employment Contract, Clemente was still disqualified from claiming disability benefits because he failed to disclose his medical history during the pre-employment medical examination.<sup>[18]</sup>

Upon appeal, the National Labor Relations Commission affirmed the ruling of the Labor Arbiter, thus:

**WHEREFORE**, premises considered, the appeal is denied for lack of merit. The assailed Decision of Labor Arbiter Norberto D. Enriquez dated October 12, 2016 is **AFFIRMED**.

**SO ORDERED.**<sup>[19]</sup> (Emphasis in the original)

Clemente appealed to the Court of Appeals, arguing that the National Labor Relations Commission committed grave abuse of discretion in rejecting his claim for disability benefits. He contended that Status Maritime cannot claim he was unfit to work prior to the contract when it had the opportunity to detect his shoulder injury but failed to do so.<sup>[20]</sup>

The Court of Appeals upheld the ruling of the labor tribunals,<sup>[21]</sup> thus;

**WHEREFORE**, premises considered, the petition is **DISMISSED**. The Decision dated 31 January 2017 and the Resolution dated 31 March 2017 of the National Labor Relations Commission in NLRC LAC No. (OFW-M) 01-000075-17 are **AFFIRMED**.

**SO ORDERED.**<sup>[22]</sup> (Emphasis in the original)

It ruled that Clemente's willful concealment of his medical history disqualified him from claiming disability benefits pursuant to Section 20(E) of the POEA Standard Employment Contract.<sup>[23]</sup>

The Court of Appeals found that when Clemente underwent pre-employment medical examination, he misrepresented that he was not aware that he was suffering from any illness. However, when he was diagnosed abroad, he admitted to Dr. Selvarajah that it was already his third time to sustain left shoulder dislocation and that two episodes occurred before he boarded the vessel.<sup>[24]</sup> This medical report was corroborated by Clemente's crewmates.<sup>[25]</sup> On the other hand, Clemente did not refute that he concealed his condition during his pre-employment medical examination and that he suffered shoulder dislocation prior to embarkation.<sup>[26]</sup>

Moreover, the Court of Appeals ruled that even if Clemente did not conceal his medical history, he still cannot claim disability benefits because his injury was not work-related.<sup>[27]</sup> While his condition manifested onboard, Clemente failed to show the connection of his injury to the nature of his work as a fitter.<sup>[28]</sup> Since Clemente failed to present substantial evidence that his work condition caused or aggravated his injury, the Court of Appeals ruled that the lower tribunals did not commit grave abuse of discretion in denying him disability benefits.<sup>[29]</sup>

Clemente moved for reconsideration of the Decision, but it was denied.<sup>[30]</sup> Thus, he filed this Petition for Review.<sup>[31]</sup>

Petitioner Clemente argues that he did not willfully conceal his medical condition during his pre-employment medical examination. He claims that he merely forgot to

disclose his medical history and, being a layman without medical background, thought there was no need to disclose this information.<sup>[32]</sup>

Petitioner further contends that his medical condition should have been detected during the pre-employment medical examination because it is an apparent and external injury.<sup>[33]</sup> He claims respondents are estopped because they had all the opportunity to screen him for the injury.<sup>[34]</sup>

Moreover, petitioner avers that the Court of Appeals erred in solely relying on the findings of the foreign physician and unverified testimonies of his co-workers.<sup>[35]</sup>

Petitioner questions the lack of diagnosis by a company-designated physician, stressing that the POEA Standard Employment Contract mandates that a company-designated physician must make their own determination as to the medical condition of a seafarer upon repatriation.<sup>[36]</sup> He argues that failure to make a personal determination renders the assessment invalid.<sup>[37]</sup>

He points out that, Dr. Selvarajah, a foreign doctor, was not a company-designated physician and, therefore, "not qualified to make conclusive findings"<sup>[38]</sup> for respondents. He avers that the company-designated physician must be a doctor who examines the seafarer after repatriation.<sup>[39]</sup> Moreover, Dr. Selvarajah's task was merely to give emergency medical attention and not to determine the nature and extent of his injury.<sup>[40]</sup>

Petitioner maintains that the failure of a company-designated physician to give a definite medical finding after the period set under the POEA Standard Employment Contract renders the disability permanent and total.<sup>[41]</sup>

Lastly, petitioner claims that he is entitled to moral and exemplary damages, as well as attorney's fees, because the respondents grossly breached their duty to grant him disability benefits.<sup>[42]</sup>

In their Comment,<sup>[43]</sup> respondents argue that petitioner is not entitled to disability benefits because he is guilty of medical concealment.<sup>[44]</sup> Citing Section 20(E) of the POEA Standard Employment Contract, respondents aver that petitioner's failure to disclose his previous shoulder dislocation constitutes fraudulent misrepresentation which disqualifies him from any compensation or benefit.<sup>[45]</sup>

In his pre-employment medical examination, petitioner categorically denied that he had shoulder dislocations in the past. Respondents claim this concealment exempts them from any obligation for the subsequent manifestation of the injury.<sup>[46]</sup>

Moreover, respondents stress that petitioner failed to refute their evidence and deny his previous episodes of shoulder dislocation.<sup>[47]</sup> They claim that petitioner likewise cannot capitalize on his pre-employment medical examination clearance because it is possible that his injury was not apparent at the time he was examined, making it difficult to detect. Further, they argue that it is the seafarers' duty to disclose their medical history.<sup>[48]</sup>

Respondents also argue that petitioner did not establish that his injury was work related.<sup>[49]</sup> They point out that petitioner's claim that he was lifting a heavy object when his shoulder snapped is baseless. They claim that petitioner neither identified the time and place of the incident nor the object he was lifting. To support this, Respondents presented an engine logbook showing that on the day of the incident, there was no pump or compeller maintenance, which is usually done by a fitter.<sup>[50]</sup> They posit that petitioner's shoulder injury occurred during a billiard game,<sup>[51]</sup> and an injury during an off- duty incident should not be compensable because it is not work-related.<sup>[52]</sup>

Moreover, respondents contend that petitioner is not entitled to damages and attorney's fees as they did not act in bad faith in rejecting his disability claim.<sup>[53]</sup>

In his Reply,<sup>[54]</sup> petitioner reiterates that there is no fraudulent misrepresentation on his part.<sup>[55]</sup> He adds that there is a presumption of fitness which was uncontroverted by evidence.<sup>[56]</sup> He refers to respondents' verified undertaking during the issuance of a license to engage Filipino seafarers, which states that it shall "deploy only technically qualified and medical fit applicants."<sup>[57]</sup>

Moreover, petitioner argues that, at the very least, his nature of employment had contributed to the aggravation of his shoulder injury.<sup>[58]</sup> Work-relatedness is apparent in the nature of his job as a fitter which requires manual work. In fact, he claims his injury occurred while he was working and carrying a heavy object. Assuming his injury is not work-related, petitioner avers that he is still entitled to disability benefits because his injury occurred during the effectivity of the contract and the POEA Standard Employment Contract does not specify that the injury or illness be work-related for it to be compensable.<sup>[59]</sup>

The sole issue for this Court's resolution is whether or not petitioner is entitled to permanent and total disability benefits. Subsumed under this issue are the following:

- (1) Whether or not the respondents complied with their obligation of referral to a company-designated physician; and
- (2) Whether or not petitioner is disqualified from claiming disability benefits due to fraudulent concealment.

## **I**

Section 20(A) of the POEA Standard Employment Contract provides the rule on the liability of the employer in cases where seafarers incur injuries or illnesses during the term of contract. The provision reads:

SECTION 20. *Compensation and Benefits.* —

A. *Compensation and Benefits for Injury or Illness*

The liabilities of the employer when the seafarer suffers work-related