

SECOND DIVISION

[G.R. No. 239015, September 14, 2020]

HAROLD B. GUMAPAC, PETITIONER, VS. BRIGHT MARITIME CORPORATION, CLEMKO SHIPMANAGEMENT S.A. AND/OR DESIREE SILLAR, RESPONDENTS.

DECISION

DELOS SANTOS, J.:

Before the Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court questioning the Decision^[2] dated July 17, 2017 and the Resolution^[3] dated March 21, 2018 denying the motion for reconsideration thereof of the Court of Appeals (CA) in CA-G.R. SP No. 138401. The CA reversed the Decision^[4] dated August 29, 2014 and the Resolution^[5] dated October 3, 2014 of the National Labor Relations Commission (NLRC), granting Harold B. Gumapac (petitioner) total and permanent disability benefits equivalent to US\$60,000.00, sickness allowance in the amount of US\$1,860.00, and 10% of the money awards as attorney's fees.

The Facts

Petitioner was hired as Able-Bodied Seaman by Bright Maritime Corporation, in behalf of its foreign principal, Clemko Shipmanagement S.A. (collectively, respondents) and assigned on board the vessel MY Capetan Costas S, under an approved Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) dated October 22, 2012, for a contract period of nine (9) months,+(-) 2 months extendable upon consent of both parties, with a basic pay of US\$465.00.^[6]

As part of routinary requirements and prior to boarding the vessel, petitioner submitted himself to pre-employment medical evaluation and was subsequently declared fit to work. He alleged that in the performance of his duties and responsibilities on board the vessel, he was always exposed to the harsh conditions particularly the toxic environment in the engine room usually filled with pollutants and intoxicating chemicals. He was also under severe stress while being away from his family and suffered regular fatigue due to long hours of work, from eight (8) to 16 hours a day, performing the following tasks: (a) measuring the depth of water in shallow or unfamiliar waters, using lead line and telephones or shouting information to the bridge; (b) breaking out, rigging, overhauling, and stowing cargo handling gear, stationary rigging, and running gear; (c) standing guard from the bow of the ship or the wing of the bridge to look for obstruction in the path of the ship; (d) steering the ship and maintaining visual communication with other ships; (e) steering the ship under the direction of the ship's commander or navigating officer, or directing the helmsman to steer, following a designated course; and (f)

overhauling lifeboats and lifeboat gear and lowering or raising lifeboats with winch or falls.^[7]

Petitioner further alleged that he had been subjected to the same stress, fatiguing duties and responsibilities, and work hazards during his three (3) years of working with respondents.^[8]

On January 24, 2013, while supervising the unloading of chemical coated grains, petitioner experienced difficulty in breathing and suffocation. He later became dizzy and was assisted by his crewmates and brought to his cabin for the administration of first aid. The medical report issued by the shipside physician states:

Reason for visiting/complaints: **DIFFICULTIES IN BREATHING SUSPECT DUE TO [ASTHMA].**^[9]

Subsequently, petitioner reported to the Master of the vessel and the incident was recorded in the vessel's medical logbook. He was thereafter brought to Marine & Industrial Health Care Services in Louisiana, U.S.A. and examined by Dr. Frank Wilson (Dr. Wilson), who diagnosed him with asthma, viz.:

The above named seaman presented today with documentation stating he had "difficulty breathing suspect due to asthma." Although a chest x ray performed today was normal; Pulmonary function testing showed his FEV (forced expiratory volume) at 54%. It should be near 100. His oxygen saturation level is 93%, it also should be at, or near, 100%. **The seaman's diagnosis is Asthma. He apparently has a history of asthma. He is not fit for sea duty, particularly considering the ship is loading a grain cargo and the complication the cargo can cause to an asthmatic, not to mention the by product(s) thereof. x x x The seaman should be sent home ASAP for further evaluation and treatment, as required.**^[10] (Emphasis and underscoring in the original)

On January 28, 2013, petitioner arrived in the Philippines. Within three (3) days from his repatriation, he reported to respondents' manning agent for referral to the company-designated physician to which, he was advised to wait for the approval of the foreign principal for his medical treatment. While waiting, petitioner experienced difficulty in breathing which prompted him to go to Manila East Medical Center in Taytay, Rizal on February 2, 2013. He was confined in the hospital for two (2) days and underwent Echocardiography wherein he was found to be suffering from Hypertension Stage 2 and Multiple Stroke with Residual Left Hemiparesis.^[11] The result states:

INTERPRETATION

Normal left ventricular size with adequate wall motion and contractility.

Normal right ventricular size with adequate wall motion and contractility.

Normal left atrium and right atrium.

Thickened anterior mitral valve leaflet without restriction of motion.

Mitral annular calcification.

Thickened aortic [cusps] with discrete calcification at the margin of right aortic cusp and non coronary cusp without restriction of motion.

Structurally normal tricuspid valve and pulmonic valve with good opening and closing motion.

Normal main pulmonary artery.

Normal aortic root.

No pericardial effusion.

Doppler:

Mitral regurgitation - mild

Tricuspid regurgitation - mild

Pulmonic regurgitation - mild

Normal pulmonary artery systolic pressure by [pulmonary] acceleration time

Normal mitral inflow pattern and mitral annular velocity by tissue Doppler imaging^[12]

On March 13, 2013, petitioner's attending physician, Dr. Konrad Lazaro (Dr. Lazaro), a neurologist, diagnosed him with Cerebral Infarction and Hypertension. He was then advised to rest and to undergo physical rehabilitation. He was also allowed to travel via plane one (1) month post stroke (March 25, 2013).^[13] During his follow-up check-up on August 24, 2013, Dr. Lazaro certified that petitioner has partially recovered but nevertheless advised the latter to engage in light activities only as he was allegedly susceptible to recurrent stroke.^[14]

On November 14, 2013, petitioner underwent a Computed Tomography (CT) Scan with the following result:

IMPRESSION:

No acute infarcts or hemorrhage in the present study. Chronic infarcts, right corona radiata, right capsula-ganglionic region and the right caudate body.^[15]

Not contented, petitioner sought the expertise of Dr. May Donato Tan (Dr. Tan), a cardiologist, to provide a medical opinion on the result of the CT Scan and to conduct additional tests on his illness. Subsequent examination result revealed the following:

Physical Examination:

General Survey: Conscious, coherent, apprehensive

Vital Signs : BP: CR: 90/in
140/90 -
150-90

HEENT : non-icteric sclera, pink palpebral conjunctivae

Heart : gr. 1-2/9 systolic murmur at Erb's

Lungs : clear bs

Abdomen : no masses palpable

Extremities : hyperactive knee jerk on the left lower extremity

Impression:

HACVD

HPN Stage I

S/P CVA, to consider infarct with hemorrhage

Bronchial Asthma, in remission

Reason for Permanent Disability:

Seaman Gumapac had 4 episodes of numbness of left lower extremities with the left (*sic*) episode involving both upper and lower extremities over the left side, but despite above symptoms **no brain CT Scan nor a 2D ECHO done for proper evaluation of his condition**. Because of the repeated episodes of recurrent numbness of lower extremity, he is therefore given a permanent disability for he will not be able to perform his job effectively, efficiently and productively as a seaman.^[16] (Emphasis in the original)

Due to the medical findings, petitioner was given a permanent disability grading as he will not be able to perform his job effectively, efficiently, and productively as a seaman.^[17]

Petitioner later filed a complaint for total and permanent disability benefits against respondents with the Labor Arbiter. He alleged that the illnesses he sustained were work-related as it happened while he was performing his duties and responsibilities as an able-bodied seaman on board the vessel. He claimed that his entitlement to total and permanent disability benefits is warranted, considering that he was not able to recover completely since his repatriation on January 28, 2013 and could no longer perform the work he was accustomed to and trained for as evidenced by the permanent disability grading declared by Dr. Tan.^[18]

On the other hand, respondents claimed that after the lapse of two (2) days from repatriation and upon oral communication of its local agents with petitioner, the latter refused to follow the required procedure and instructions for treatment and evaluation of his alleged condition. Petitioner also failed to comply with the three (3)-day mandatory reportorial requirement as provided under the POEA-SEC, as well as prevailing jurisprudence. Despite petitioner's non-cooperation, the local manning agent sent out a letter dated February 8, 2013 to the last known recorded address of petitioner to remind him of their instruction to report to the company-designated physician at Ygeia Medical Center for evaluation of his health condition.^[19]

After a couple of days, respondents claimed that they were able to get in contact over the phone with petitioner who confirmed receipt of the letter. According to respondents, petitioner explained that he had already a new address and that he was no longer reporting to the local agents and company-designated physician as he opted to engage the services of a personal physician due to alleged numbness of half of his body. This conversation was reduced into writing in a letter dated February 15, 2013 which was sent to petitioner's new address. Thus, respondents averred that they were never given the chance to properly assess and evaluate

petitioner's health condition by virtue of his unjust refusal to cooperate and to follow the procedures and instructions relayed to him.^[20]

Ruling of the Labor Arbiter

On April 29, 2014, the Labor Arbiter dismissed the complaint against respondents and denied petitioner's claim for total and permanent disability benefits. The Labor Arbiter held that petitioner failed to discharge the burden of evidence that he acquired the illness complained of from his work as an able-bodied seaman during his three (3)-month stint aboard MV Capetan Costas S, and that such illnesses manifested during the effectivity of his employment contract. Moreover, petitioner failed to submit himself to post-employment medical examination as mandated by the POEA-SEC. The Labor Arbiter was of the position that, although petitioner asserted that he reported to the manning agency upon his arrival, it is insufficient to establish his stance for lack of convincing evidence to support such allegation. In addition, petitioner did not have a cause of action for he was not armed with an assessment of total and permanent disability at the time he filed his complaint.^[21]

Petitioner, thereafter, filed an appeal before the NLRC docketed as NLRC LAC No. 06-000498-14(M).^[22]

Ruling of the NLRC

On August 29, 2014, the NLRC reversed and set aside the ruling of the Labor Arbiter. The dispositive portion reads:

WHEREFORE, the Appeal for being meritorious is GRANTED. The judgment a quo is REVERSED and SET ASIDE and a NEW ONE entered as follows:

1. Respondents are in solidum ordered to pay complainant Harold B. Gumapac total permanent benefits equivalent to US\$60,000.00 payable in peso equivalent, at the time of payment[;]
2. Sickness allowance in the amount of US\$1,860.00; and
3. Ten (10%) percent of the money awards as attorney's fees.

SO ORDERED.^[23]

Respondents moved for a reconsideration of the case but the same was denied in a Resolution^[24] dated October 3, 2014. Consequently, respondents filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 138401.

Ruling of the CA

On July 17, 2017, the CA rendered a Decision^[25] reversing the NLRC's Decision and thereby reinstating the Decision of the Labor Arbiter dated April 29, 2014, to wit:

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The assailed Decision of the NLRC dated 29 August 2014 and Resolution dated 3 October 2014 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision of the Labor Arbiter dated 29 April 2014 is **REINSTATED**. Meanwhile, petitioners' prayer for the issuance of temporary restraining order and writ of preliminary injunction is **DENIED** for being moot and academic.