SECOND DIVISION

[G.R. No. 237063, July 24, 2019]

FRANCIVIEL* DERAMA SESTOSO, PETITIONER, VS. UNITED PHILIPPINE LINES, INC., CARNIVAL CRUISE LINES, FERNANDINO T. LISING, RESPONDENTS.

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 149802, *viz*:

1) Decision[1] dated August 24, 2017 reversing the NLRC's grant of total and permanent disability benefits to petitioner Franciviel Derama Sestoso; and

2) Resolution[2] dated January 25, 2018 denying petitioner's motion for reconsideration.

The Proceedings before the Labor Arbiter

In his Complaint dated January 18, 2016, petitioner Franciviel Derama Sestoso sued respondents United Philippine Lines, Inc. (UPLI), Carnival Cruise Lines, and UPLI's owner Fernandino T. Lising for total and permanent disability benefits, moral and exemplary damages, and attorney's fees.[3]

Petitioner essentially alleged:

On July 2014, respondent UPLI in behalf of its foreign principal Carnival Cruise Lines hired him as Team Headwaiter on board M/V Carnival Inspiration for a period of 6 months.[4]

On October 31, 2014, he did his usual task of cleaning the dining table. But this time, when he knelt to clean the dining table, a sharp pain radiated down his right knee. Hence, as soon as the vessel docked at Los Angeles, California, he underwent a Magnetic Resonance Imaging (MRI) at a shore side clinic. The result showed a complex tear of the medial meniscus and degenerative joint changes. It also revealed the arthroscopy or knee surgery he had in February 2014.[5] He, nevertheless, continued working while on pain relievers until he finished his contract

and got repatriated on February 13, 2015.[6]

Upon his arrival in the country, company-designated physician Dr. Mylene Cruz-Balbon subjected him to a series of examinations and treatments and eventually referred him to orthopedic surgeon Dr. William Chuasuan, Jr., for further evaluation and management.

On June 25, 2015, Dr. Chuasuan, Jr. recommended him for surgery and suggested a disability rating of Grade 10 – stretching of knee ligaments. Dr. Chuasuan, Jr. opined he had already reached the maximum medical improvement level.[7] In her Medical Report[8] dated June 25, 2015, Dr. Cruz-Balbon noted and referred to Dr. Chuasuan, Jr.'s findings and recommendation. On July 28, 2015, Dr. Cruz-Balbon issued a certification[9] and letter[10] bearing her final diagnosis on him as of June 4, 2015, *i.e. Osteoarthritis, Medial Meniscal Tear, Right Knee; S/P Arthroscopic Partial Menisectomy and Debridement of Osteophytes, Rights Knee*.[11] Notably, neither of the two documents dated July 28, 2015 contained any disability rating or certificate of fitness to work.

Dr. Cruz-Balbon stopped giving him medical treatment since June 26, 2015 despite his need for further treatment. Neither Dr. Cruz-Balbon nor Dr. Chuasuan, Jr. gave him a final and definite disability rating within the 120/240-day window.[12]

He was constrained to consult another orthopedic – Dr. Victor Gerardo E. Pundavela, who diagnosed him with *Severe Degenerative Osteoarthritis, right knee; Degenerative Osteoarthritis, left knee; Medial Meniscal Tear, right knee s/p Arthroscopic Meniscectomy and Debridement*. The latter assessed him to be partially and permanently disabled/unfit to work as a seafarer.[13]

For their part, respondents countered that petitioner was not entitled to disability benefits since his recurrent knee pain was, as found by his own specialist, a pre-existing illness, hence, not compensable. If at all, petitioner was entitled only to Grade 10 rating per Dr. Chuasuan, Jr.'s recommendation. For this rating was more reflective of petitioner's real health condition. They, nonetheless, offered Grade 10 disability benefits to petitioner out of sheer goodwill. But, as it was, petitioner refused it.[14]

The Labor Arbiter's Ruling

By Decision dated May 24, 2016, the labor arbiter awarded Grade 10 disability benefits to petitioner. The labor arbiter ruled that although petitioner's illness was found to be pre-existing, he was still entitled to the Grade 10 disability grading given by company-designated Dr. Cruz-Balbon who closely monitored and treated him for months.[15]

The Ruling of the National Labor Relations Commission

On petitioner's appeal, the National Labor Relations Commission (NLRC) awarded him permanent and total disability benefits through its Decision dated August 31,

2016. The NLRC ruled that the grading assigned by Dr. Cruz-Balbon was a mere suggestion, hence, it was not a valid and final disability assessment. Dr. Cruz-Balbon's failure to issue a definite and final disability assessment within two hundred forty (240) days rendered petitioner's disability permanent and total. It, therefore, ordered respondents to pay petitioner US$60,000.00 plus ten percent (10%) as attorney's fees.[16]

Respondents' motion for reconsideration was denied through Resolution dated December 22, 2016.[17]

The Proceedings Before the Court of Appeals

Dissatisfied, respondents sought to nullify the NLRC dispositions via a petition for *certiorari* before the Court of Appeals. They argued that petitioner's illness was not compensable because it was pre-existing. If at all, petitioner was only entitled to Grade 10 rating per Dr. Chuasuan, Jr.'s recommendation. This rating was in accordance with the schedule of disability grading under the POEA Contract. Finally, the award of attorney's fees was improper since there was no showing of bad faith on their part.[18]

Court of Appeals' Ruling

By Decision[19] dated August 24, 2017, the Court of Appeals reversed. It ruled that petitioner's disability was not compensable for it was a preexisting illness, *i.e. Osteoarthritis*. Too, petitioner allegedly failed to allege and prove that his illness was aggravated by his working conditions. Thus, the 120/240 window was found to be inapplicable.

Petitioner's motion for reconsideration was denied under Resolution[20] dated January 25, 2018.

The Present Petition

Petitioner now implores the Court to review and reverse the Decision dated August 24, 2017 and Resolution dated January 25, 2018 of the Court of Appeals both denying his claim for total and permanent disability benefits on the ground that his illness was pre-existing and did not appear to have been aggravated by his employment with respondents. The fact that the company-designated physician gave petitioner a Grade 10 disability rating shows his illness is work-related.[21]

On the other hand, respondents maintain that petitioner is not entitled to disability benefits since his illness was pre-existing, hence, not-work related, nor compensable. For this reason, the 120/240 window does not apply. Assuming petitioner's disability was compensable, he is only entitled to disability benefit corresponding to Grade 10.

Issue

Did the Court of Appeals commit reversible error when it denied the award of total and permanent disability benefits to petitioner?

Ruling

The petition is meritorious.

Petitioner's illness is work-related and compensable.

In ***More Maritime Agencies, Inc. v. NLRC***[22] the Court held that compensability of an illness or injury does not depend on whether the injury or disease was pre-existing at the time of employment but rather on whether the injury or illness is work-related or has aggravated the seafarer's condition, thus:

> **But even assuming that the ailment of Homicillada was contracted prior to his employment with the MV Rhine, this fact would not exculpate petitioners from liability. Compensability of an ailment does not depend on whatever the injury or disease was preexisting at the time of the employment but rather if the disease or injury is work-related or aggravated his condition. It is indeed safe to presume that, at the very least, the arduous nature of Homicillada's employment had contributed to the aggravation of his injury, if indeed it was pre-existing at the time of his employment. Therefore, it is but just that he be duly compensated for it**. It is not necessary, in order for an employee to recover compensation, that he must have been in perfect condition or health at the time he received the injury, or that he be from disease. Every workman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of his employees, he takes them as he finds them, and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. If the injury is the proximate cause of his death or disability for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had for injury independent of any pre-existing weakness or disease. (Emphasis supplied)

This brings to fore the following question: Who has the burden of proving that petitioner's illness is work-related or has aggravated his condition at work?

Under the 2010 POEA-SEC, "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied" is deemed to be a "work-related illness."[23] Section 20 (A) (4) further provides that "Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related." This provision speaks of a legal

presumption of work-relatedness in favor of the seafarer. As such, the employer, and not the seafarer, has the burden of disproving the presumption by substantial evidence. ***Romana v. Magsaysay Maritime Corporation***[24] is in point:

> Thus, in *Racelis v. United Philippine Lines, Inc. and David v. OSG Shipmanagement Manila, Inc.,* the Court held that **the legal presumption of work-relatedness of a non-listed illness should be overturned only when the employer's refutation is found to be supported by substantial evidence,** which, as traditionally defined, is "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion."

It must be emphasized, though, that the presumption under Section 20-B (4)[25] is only limited to "work-relatedness" of an illness and does not cover or extend to "compensability." ***Atienza v. Orophit***[26] elucidates:

> Nonetheless, the presumption provided under Section 20 (B) (4) is only limited to the "work-relatedness" of an illness. **It does not cover and extend to *compensability*. In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability**. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that his work conditions caused or at least increased the risk of contracting the disease. **This can be gathered from Section 32-A of the 2000 POEA-SEC which already qualifies the listed disease as an "occupational disease" (in other words, a "work-related disease"), but nevertheless, mentions certain conditions for said disease to be compensable:**
>
> SECTION 32-A. OCCUPATIONAL DISEASES
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> 1. The seafarer's work must involve the risks described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
> 4. There was no notorious negligence on the part of the seafarer. (Emphasis supplied)

Unlike "work-relatedness," no legal presumption of compensability is accorded to the seafarer. As such, the seafarer bears the burden to prove substantial evidence that