

FIRST DIVISION

[G.R. No. 234346, August 14, 2019]

MARLOW NAVIGATION PHILS., INC., MARLOW NAVIGATION NETHERLANDS B.V., AND CAPTAIN LEOPOLDO C. TENORIO, PETITIONERS, VS. PRIMO D. QUIJANO, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated March 29, 2017 and the Resolution^[3] dated September 15, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145056 which affirmed the Decision^[4] dated January 27, 2016 of the National Conciliation and Mediation Board-NCR Office of the Panel of Voluntary Arbitrators ordering petitioners Marlow Navigation Phils., Inc., Marlow Navigation Netherlands, B.V., and Captain Leopoldo C. Tenorio (collectively; petitioners) to jointly and severally pay respondent Primo D. Quijano (Quijano) permanent and total disability benefits in the amount of US\$127,932.00 and 10% attorney's fees.

The Facts

On July 11, 2013, Quijano was hired as Cook by petitioner Marlow Navigation Phils., Inc., for its principal Marlow Navigation Netherlands B.V., on board the vessel M/V Katharina Schepers, for a period of six (6) months.^[5] After undergoing the required pre-employment medical examination where Quijano was declared fit for sea duty^[6] by the company designated physician, the former boarded the vessel on August 18, 2013.^[7]

On January 30, 2014, Quijano was signed off from the vessel purportedly due to completion of his employment contract. On February 3, 2014, he reported at petitioners' office and was paid the balance of his final wages for the period January 1 to 30, 2014,^[8] and underwent interview for de briefing^[9] purposes. Thereafter, Quijano was hired anew for the same position, this time, under a 10-month Contract of Employment^[10] dated March 5, 2014. However, his employment did not materialize due to his confinement at the East Avenue Medical Center (EAMC) on March 18, 2014, where his independent physician diagnosed him to be suffering from liver abscess, cholecystitis with cholelithiasis, diabetes mellitus, type II, and panophthalmitis, right.^[11]

Claiming that his illnesses were acquired during his last employment and that petitioners refused to grant his request for medical assistance when he reported on February 3, 2014, Quijano filed against the latter a complaint for disability benefits, sickness allowance, medical reimbursement, damages, and attorney's fees, pursuant

to the IBF-AMOSUP IMEC/TCCC Collective Bargaining Agreement (CBA),^[12] of which he was a member, before the National Conciliation and Mediation Board (NCMB), Office of the Panel of Voluntary Arbitrators (PVA), docketed as MVA-078-RCMB-NCR-070-04-07-2015.

Quijano alleged that due to hostile working conditions on board M/V Katharina Schepers, he experienced body weakness, easy fatigability, poor eye sight, and severe low back pain, which he reported to the Chief Officer and Captain.^[13] He was relieved from his post with his contract cut short to 5 1/2 months. Quijano added that upon repatriation, he attempted to report for post-employment medical examination and treatment but was unjustly refused, prompting him to seek medical attention at his own expense at the EAMC on February 3, 2014,^[14] where he was diagnosed by his independent physician, Dr. Tito Garrido (Dr. Garrido), to have "T/C Liver Pathology with Possible Gallbladder Disease."^[15] On March 18, 2014, Quijano was brought again to EAMC due to fever and chills and confined thereat until April 16, 2014,^[16] after undergoing ultrasound guided percutaneous liver abscess drain, among others.^[17] Considering that his illnesses rendered him incapable of resuming work that resulted in his total and permanent disability, he filed the complaint.

For their part, petitioners denied Quijano's claims contending that the latter disembarked due to expiration of his employment contract and that he was able to finish the same without any issue, accident or illness while on board the vessel.^[18] They likewise denied that Quijano requested for medical assistance, contending that the latter did not disclose his alleged medical condition when he accomplished the de-briefing questionnaire^[19] and even accepted payment of his remaining wages and benefits without complain. Lastly, they argued that Quijano did not present himself for a post-employment medical examination before the company-designated physician as mandated under the POEA-SEC, and hence, not entitled to claim disability benefits.^[20]

PVA Ruling

In a Decision^[21] dated January 27, 2016, the PVA found Quijano entitled to total and permanent disability benefits, and accordingly, ordered petitioners to solidarily pay him US\$127,932.00 in accordance with the CBA, and 10% attorney's fees.^[22] The PVA gave more credence to Quijano's claim that the latter was denied medical assistance, pointing out that his 6-month contract was pre-terminated without any reason, and that after his repatriation when he reported for post-employment medical examination, he was merely paid his remaining wage in the total amount of US\$3,297.46 and not referred to a company-designated physician.^[23] Furthermore, it pointed out that since the company-designated physician failed to arrive at a definite assessment of Quijano's fitness to work or degree of disability within the 120/240-day period, the latter's disability was deemed total and permanent by operation of law.^[24]

Undaunted, petitioners filed a petition for review^[25] before the CA asserting that Quijano was not medically repatriated and that he failed to comply with the mandated post-employment medical examination in claiming disability benefits.

In the meantime, a writ of execution was issued constraining petitioners to deposit the judgment award of US\$127,932.00 plus 10% attorney's fees equivalent to P6,631,231.20 in favor of Quijano before the NCMB.^[26]

The CA Ruling

In a Decision^[27] dated March 29, 2017, the CA agreed with the findings of the PVA that Quijano was entitled to total and permanent disability benefits, ruling that Quijano cannot be faulted in consulting an independent physician for his post-employment medical examination considering that petitioners abandoned him when they denied his request for medical assistance. It held that petitioners' failure to explain the pre-termination of respondent's contract supports the claim that he was medically repatriated, and that there was substantial evidence to show that Quijano was suffering from a work-related illness. Lastly, it ruled that since respondent's position as Cook was supervisory in nature, he was correctly classified as a junior officer and not a mere rating in determining his disability compensation under the CBA.

Petitioners' motion for reconsideration^[28] was denied in a Resolution^[29] dated September 15, 2017; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the finding that Quijano is entitled to total and permanent disability benefits.

The Court's Ruling

The petition is partly meritorious.

Entitlement to disability benefits by seamen on overseas work is a matter governed not only by medical findings but also by Philippine law and by the contract between the parties. Section 20 (A) of the 2010 POEA-SEC, which is deemed incorporated in every seafarer's contract of employment, provides for the procedure as to how the seafarer can legally demand and claim disability benefits from the employer/manning agency for an injury or illness suffered, to wit:

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:

x x x x

2. x x x 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-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x

For this purpose, the seafarer shall **submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance.** In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphases supplied)

The person who claims entitlement to the benefits provided by law must establish his or her right thereto by substantial evidence,^[30] or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.^[31]

In this case, the PVA, as well as the CA, were consistent in holding that Quijano was able to substantially prove his entitlement to total and permanent disability benefits, considering that: (a) he was medically repatriated on January 30, 2014 and reported to petitioners' office within the mandated three (3)-day period for post-medical examination; (b) he was suffering from liver abscess, cholecystitis with cholelithiasis, diabetes mellitus, type II, and panophthalmitis, which were deemed work-related illnesses being listed occupational diseases under the 2010 POEA-SEC; and (c) there was non-compliance by the company-designated physician of the required final and definite assessment within the 120/240-day treatment period resulting in the *ipso jure* grant to the seafarer of permanent and total disability benefits. Anent this last point, case law states:

Failure of the company-designated physician to comply with his or her duty to issue a definite assessment of the seafarer's fitness or unfitness to resume work within the prescribed period shall transform the latter's temporary total disability into one of total and permanent by operation of

law x x x.

x x x x

Notably, during the 120-day period within which the company-designated physician is expected to arrive at a definitive disability assessment, 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-designated physician to be permanent, either partially or totally, as defined under the 2010 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. x x x The consequence for non-compliance within the extended period of the required assessment is likewise the *ipso jure grant to the seafarer of permanent and total disability benefits, regardless of any justification.*^[32] (Emphases and italics supplied)

That Quijano was not able to report for post-employment medical examination, and hence, disqualified from claiming disability benefits, is belied by the records which show that on February 3, 2014, or within the mandated three (3)-day period from repatriation, he reported to petitioners' office not primarily for de-briefing purposes but to actually request for medical assistance and treatment from the company-designated physician which, however, was rejected causing him to seek treatment from other doctors. In particular, Quijano claimed to have reported the following day after his repatriation, or on January 31, 2014, and on February 3, 2014 for post-employment medical examination but was refused by petitioners at both instance.^[33] For this reason, on February 3, 2014, Quijano proceeded to EAMC where he was seen by Dr. Garrido in view of his right upper quadrant pain (abdominal pain) that lasted for 2-3 days and was found with "positive right upper quadrant (abdomen) tenderness and fever."^[34] He was diagnosed with "T/C Liver Pathology with possible Gallbladder Disease" and was prescribed medication with a further advise to undergo ultrasound of the Hepatobiliary Tract including the pancreas.^[35] Logically, Quijano's resort to an independent physician to check on his condition on February 3, 2014 was most likely due to the company's rejection of his plea for medical assistance and treatment. Besides, under the rules on evidence, as between Quijano's claim that his request for medical examination and treatment was rejected and petitioners' bare denial of the same, the former's positive assertion is generally entitled to more weight.^[36] In *Interorient Maritime Enterprises, Inc. v. Remo*,^[37] the Court ruled that "the absence of a post-employment medical examination cannot be used to defeat respondent's claim since the failure to subject the seafarer to this requirement was not due to the seafarer's fault but to the inadvertence or deliberate refusal of [his employers]."^[38]

In the same vein, it is untrue that Quijano was repatriated due to expiration of contract. A perusal of the records would show that Quijano's Contract of Employment dated July 11, 2013 commenced only when he departed for M/V Katharina Schepers on August 18, 2013, in accordance with Section 2 (A)^[39] of the