

SECOND DIVISION

[G.R. No. 227934, September 04, 2019]

**JERRY BERING TALAUGON, PETITIONER, VS. BSM CREW
SERVICE CENTRE PHILS., INC., BERNARD * SCHULTE
SHIPMANAGEMENT LTD. AND DANILO MENDOZA,
RESPONDENTS.**

DECISION

LAZARO-JAVIER, J.:

The Case

This petition for review^[1] seeks to set aside the following issuances of the Court of Appeals in CA-G.R. SP No. 144155:

1. Decision^[2] dated August 31, 2016, finding petitioner entitled to partial permanent disability benefits; and
2. Resolution^[3] dated October 18, 2016, denying petitioner's motion for reconsideration.

The Antecedents

On October 17, 2014, petitioner Jerry Bering Talaugon sued respondents BSM Crew Service Centre Phils., Inc., Bernard Schulte Shipmanagement Ltd., and Danilo Mendoza for full disability benefits, damages, and attorney's fees.

Petitioner's Version

Respondents employed him as an oiler on board M/T Erika Schulte. His duties included maintaining the engine's machinery, sewage, lighting, and air-conditioning. During his employment, he felt dizzy and nauseous. His lower abdomen was painful. He got hospitalized in Saudi Arabia and diagnosed with "Renal Colic Lumbago post Zoster Neuralgia." He was given pain medications and advised to be repatriated for further treatment.^[4]

On January 18, 2014, he returned to the country and thereafter consulted with company-designated physician Dr. Richard Olalia. The latter diagnosed him with "Hyperthesia, Ruled out Hansen's Disease, L4-L5 Disc Protrusion, Disc Dessication" and advised therefor physical therapy.^[5]

On April 3, 2014, another company-designated physician Dr. Godfrey Robeniol found a tumor in his spinal cord. A few days later, he underwent surgery for tumor

removal.^[6]

After undergoing surgery and physical therapy, he went back to, yet, another company-designated physician Dr. Gilbert Rañoa. The latter observed that he was still suffering lower back pain probably due to his lumbar spondylosis. Dr. Rañoa then declared that his illness was not work related. Dr. Rañoa, nonetheless, offered to give him a disability grading of 11.^[7]

He, thereafter, sought the opinion of his personal physician, Dr. Venancio Garduce who concluded that due to the weakness of his upper extremities, it was impossible for him to be employed again as seafarer. Dr. Garduce opined he was entitled to a Grade 3 disability rating.^[8]

Respondents' Version

While on board, petitioner noted blisters on his right lumbar region accompanied by fever, headache, and body pain. The blisters, however, healed without medication. Upon petitioner's repatriation, company designated Dr. Robert Lim found him suffering from Hyposthetics (nerve damage).^[9]

Petitioner underwent an MRI which showed L4-L5 disc protrusion and disc dessication. Since his back pain persisted, another MRI was done where a tumor was discovered in his spine.^[10]

In April 25 2014, he had the tumor excised. On May 15, 2014, he was seen by Dr. Mylene Cruz-Balbon who noted that while he continued with his rehabilitation, "the prognosis of returning to (his) sea duties is guarded." Yet another company physician, Dr. William Chuasuan, Jr. found that petitioner was suffering from a grade 11 disability for slight rigidity or 1/3 loss of motion or lifting power.^[11]

The Ruling of the Labor Arbiter

By Decision dated May 3, 2015, Labor Arbiter Nicolas awarded petitioner permanent total disability compensation. The labor arbiter ruled that the company-designated physicians failed to make a final assessment of petitioner's condition within 120/240 window period. Petitioner's disability had, therefore, become total and permanent.^[12]

The Ruling of the National Labor Relations Commission (NLRC)

On appeal, the NLRC modified the award to partial permanent disability. It stressed that Dr. Chuasuan, Jr.'s assessment of petitioner's condition equivalent to grade 11 disability was made within the 120-day period from the latter's repatriation on January 17, 2014. Even arguing that his treatment lasted beyond 120 days, the extended period was justified because petitioner needed further medical treatment.^[13]

The Ruling of the Court of Appeals

By Decision dated August 31, 2016, the Court of Appeals affirmed. It noted that from the time petitioner got repatriated on January 18, 2014 up to the time Dr.

Chuasuan, Jr. recommended a grade 11 disability on May 15, 2014, only 117 days had elapsed. Also, Dr. Chuasuan, Jr. had actually given petitioner a final assessment within the 120-day period, hence, the latter cannot be deemed totally and permanently disabled.^[14]

By Resolution dated October 18, 2016, petitioner's motion for reconsideration was denied.^[15]

The Present Petition

Petitioner now asks the Court to reverse the Court of Appeals' assailed dispositions. He reiterates that the company physicians failed to make a final disability assessment of his illness within the 120/240 window. The law, thus, presumes that his disability had become permanent and total. But even arguing that a final and definite assessment was made within the prescribed period, he was still unable to return for sea duty after his illness. Thus, he should be deemed permanently and totally disabled.^[16]

For their part, respondents counter that company physician Dr. Chuasuan, Jr. actually issued Medical Report dated May 15, 2014, finding petitioner's illness equivalent to grade 11 disability. The assessment was issued within 120 days from the time he got repatriated. Hence, the same dispels petitioner's claim for permanent total disability compensation.^[17]

The Core Issue

Is petitioner entitled to permanent total disability benefits?

The Ruling

As a rule, only questions of law may be raised *via* a petition for review under Rule 45 of the Rules of Court. This rule, however, is not absolute and admits certain exceptions, e.g. where the factual findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC, as in this case. The Court, therefore, may look into such conflicting views and make its own factual determination of the real extent and character of petitioner's ailments.^[18]

Petitioner vigorously asserts that he is entitled to permanent total disability benefits because the company-designated physicians failed to make a final assessment of his illness. Respondents, on the other hand, insist that after a series of evaluation, Dr. Chuasuan, Jr. actually gave petitioner a disability grade of 11 within 120 days from the time petitioner got repatriated.

In ***Elburg Shipmanagement Phils., Inc. v. Quioque, Jr.***, the Court set the following guidelines to determine a seafarer's disability, *viz*:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;