

## SECOND DIVISION

[ G.R. No. 222348, November 20, 2019 ]

**JHEROME G. ABUNDO, PETITIONER VS. MAGSAYSAY MARITIME CORPORATION, GRAND CELEBRATION LDA AND/OR MARLON ROÑO,\* RESPONDENTS.**

### DECISION

**INTING, J.:**

Before this Court is a petition for review<sup>[1]</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated June 10, 2015 and Resolution<sup>[3]</sup> dated January 14, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136759, which reversed and set aside the Decision<sup>[4]</sup> dated April 23, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW M) 01-000051-14 and NLRC NCR Case No. (M) 06-08397-13.

#### *Antecedents*

As culled from the records, the pertinent facts are as follows:

Jherome G. Abundo (petitioner) was formerly employed as Able Seaman on board the vessel "Grand Celebration-D/E" (Grand Celebration). On the other hand, Magsaysay Maritime Corporation is a licensed manning agent of its principal, Grand Celebration LDA (collectively, respondents).<sup>[5]</sup>

On April 25, 2012, the petitioner was engaged by the respondents as Able Seaman for eight months. On May 8, 2012, he departed from the Philippines and embarked the vessel *Grand Celebration*.<sup>[6]</sup>

On December 15, 2012, while the petitioner was securing a lifeboat, a metal block snapped and hit his right forearm. First aid was immediately administered on the petitioner at the ship's infirmary. Then, the petitioner was sent to a hospital in Brazil. In the hospital, a posterior splint was applied on the affected area to immobilize it and prevent further injury.<sup>[7]</sup>

After consultation with the doctor assigned in the vessel, the petitioner was recommended for repatriation. When he was fit to travel, the petitioner was medically repatriated on January 7, 2013. Upon arrival, the petitioner was referred to a company-designated physician, who immediately ordered an X-ray. The X-ray revealed an overriding fracture, fragment at the distal 3<sup>rd</sup> shaft of the right radius.<sup>[8]</sup>

Subsequently, the petitioner underwent a treatment procedure for open reduction and internal fixation with plate replacement and screws of the fractured right distal

radius. After his discharge from the hospital, the petitioner was then made to undergo physiotherapy to improve the function of his right arm.<sup>[9]</sup>

On April 22, 2013, the company-designated physician noted: 1) weak grip, right; 2) paresthesia on the right thumb; and 3) left wrist pain upon extreme movements. The petitioner was advised to continue the rehabilitation. Dr. Esther G. Go (Dr. Go), the company-designated doctor, issued an interim assessment of Grade 10 disability which was noted by the company medical coordinator, Dr. Robert D. Lim (Dr. Lim), thus:

x x x x

Patient complained of left wrist pain upon extreme movements.

There is weak grip, right.

There is also paresthesia on the right thumb.

He was advised to continue his rehabilitation.

His interim assessment is Grade 10 - ankylosis of the left wrist in normal position.<sup>[10]</sup>

Further, on April 26, 2013, Dr. Ramon Lao (Dr. Lao), a company surgeon, suggested a Grade 10 disability due to ankylosed wrist.<sup>[11]</sup>

Meanwhile, the petitioner sought an independent doctor, Dr. Rogelio P. Catapang (Dr. Catapang), an orthopaedic surgery and traumatic flight surgeon who made the following findings:

Mr. Abundo continues to have weakness and pain of the right extremity despite continuous physiotherapy. Range of motion is restricted particularly in supination. Because his grip is weak, he is unable to lift heavy objects, the kind of work seaman are expected to perform. He has lost his pre-injury capacity and is UNFIT to work back at his previous occupation.

x x x x

In addition, excessive forces associated with throwing and swinging activities may aggravate the present condition, the patient sustained his injury following a direct trauma to his arm; although he has received first aid the first definitive treatment was immediately done. The signs and symptoms associated with these injuries are directly related to the degree of severity. There may or may not be any visible or palpable deformity. Point tenderness is normally present at the site of injury, and may remain. The patient has demonstrated a limited range of motion, weakness of the hand in the affected side and an increase in pain at the involved site with attempted movements.

Mr. Abundo's pre-injury job requires that he operates some machines and lift heavy objects. He may also be required to use tools to adjust nuts,

bolts and screws on some occasions. Mr. Abundo claimed that he can no longer perform these functions because he no longer has the strength in his right hand.

Mr. Abundo, with his present condition, he will not be able to perform his pre-injury work because of the physical demands it entails. Some [restriction] must be placed on his work activities. This is in order to prevent the impending late sequelae of his current condition. He presently does not have the physical capacity to return to the type of work he was performing at the time of the injury. He is therefore, UNFIT in any capacity for further strenuous duties.<sup>[12]</sup>

With these findings, the petitioner demanded from the respondents the maximum benefit under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) and claimed to be suffering from permanent disability. Instead of granting permanent disability benefits, the respondents offered US\$10,075.00, an amount equivalent to a Grade 10 disability. As a result, the petitioner filed a labor complaint against the respondents seeking the payment of sickness allowance, permanent and total disability benefits, moral and exemplary damages, and attorney's fees.

For their part, the respondents argued: (1) that the petitioner failed to prove that he is suffering from total and permanent disability; (2) that he failed to observe the conflict-resolution procedure in the POEA-SEC which is to refer to a third doctor to settle the conflicting findings between the company-designated physician and that of the petitioner's chosen physician; and (3) that the petitioner is not entitled to his claims including moral and exemplary damages and attorney's fees.

#### *The Ruling of the Labor Arbiter*

In the Decision<sup>[13]</sup> dated October 30, 2013, Labor Arbiter Virginia T. Luyas-Azarraga (Labor Arbiter) ruled in favor of the petitioner. The Labor Arbiter found that the petitioner's disability is permanent and total based on the pieces of evidence presented. She explained that even after the company-designated physician gave an interim assessment of the petitioner's medical condition under Grade 10 disability, the petitioner was still undergoing rehabilitation.<sup>[14]</sup> The Labor Arbiter opined that total disability does not mean absolute helplessness. Thus, she concluded that in disability compensation, it is not the injury which is compensated but rather the incapacity to work resulting in the impairment of one's earning capacity.<sup>[15]</sup> For these reasons, the Labor Arbiter deemed it wise to award to the petitioner US\$60 000.00 representing the maximum coverage for disability benefit under the POEA-SEC. The Labor Arbiter, likewise, awarded 10% attorney's fees to the petitioner. The dispositive portion of the Decision reads:

WHEREFORE, PREMISES CONSIDERED, judgment is rendered ordering respondents, jointly and severally to pay complainant Sixty Thousand U.S. Dollars (U.S. \$60,000.00) or its peso equivalent at the time of payment, plus 10% of the total award as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.

Undaunted, the respondents appealed to the NLRC.

### *The Ruling of the NLRC*

On April 23, 2014, the NLRC promulgated a Decision<sup>[16]</sup> affirming the Labor Arbiter's ratiocination. The NLRC echoed the Labor Arbiter's findings that the petitioner was not restored to his pre-injury condition and his injury made him unable to perform his customary work as a seafarer. Moreover, the NLRC ruled that while it has been held that failure to resort to a third doctor will render the company doctor's diagnosis controlling, it is not the automatic consequence. The NLRC explained that resort to a third doctor is merely directory and not mandatory.<sup>[17]</sup> It disposed the case as follows:

WHEREFORE, premises considered, the appeal is hereby DENIED and the assailed Decision affirmed.

SO ORDERED.<sup>[18]</sup>

Subsequently, the respondents filed a motion for reconsideration which was denied by the NLRC.

Aggrieved, the respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.

### *The Ruling of the CA*

On June 10, 2015, the CA promulgated the assailed Decision<sup>[19]</sup> granting the petition and reversing the NLRC's ruling, to wit:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is GRANTED such that the assailed decision and resolution dated 23 April 2014 and 16 June 2014 respectively, both rendered by the National Labor Relations Commission Sixth Division are hereby REVERSED and SET ASIDE. Private respondent Jherome G. Abundo is awarded US\$10,075.00 or its Philippine Peso equivalent as his disability benefit. Lastly, the prayer for temporary restraining order and/or preliminary injunction is DENIED for being moot.

SO ORDERED.<sup>[20]</sup>

The CA held that referral to a third doctor is mandatory.<sup>[21]</sup> It ruled that it is the obligation of the seafarer to notify the concerned employer of his intention to settle the issue through the appointment of a third doctor.<sup>[22]</sup> The CA upheld the assessment of Dr. Go, the company-designated physician, stating that the petitioner suffers from Grade 10 disability.<sup>[23]</sup>

Likewise, the CA clarified that the 120/240-day period could no longer be made as basis for the assessment of the disability grade but the actual disability grade given by the company-designated physician or the third independent physician pursuant to Section 20(A)(6) of the POEA-SEC. Applying Section 20(A)(6) of the POEA-SEC, the CA stated that the disability shall be based on the disability grading provided under

Section 32 of the POEA-SEC which grants a disability award of US\$10,075.00.<sup>[24]</sup>

Finally, the CA denied the petitioner's prayer for attorney's fees. It declared that the respondents are well within their rights to deny the petitioner's claim for permanent an total disability benefit.<sup>[25]</sup>

The petitioner moved for reconsideration which was denied by the CA in its assailed Resolution<sup>[26]</sup> dated January 14, 2016.

Undeterred, the petitioner comes before this Court raising the following grounds, to wit:

A. The Court of Appeals was in error when it reversed the NLRC's Decision as the NLRC did not act with grave abuse of discretion since its decision is based on substantial evidence.

B. The Court of Appeals committed a serious mistake when it failed to uphold the evaluation made by the NLRC.

C. The Court of Appeals was in error in its application of the POEA-SEC conflict-resolution procedure regarding the third physician referral.

D. The Court of Appeals seriously erred when they failed to uphold that it is by operation of law that the petitioner is considered a totally and permanently disabled, and as such, the "*third physician referral rule*" finds no application in the instant case.<sup>[27]</sup>

The basic contention of the petitioner is that he was permanently disabled as a result of the injuries he suffered while working as a seafarer. He maintains that disability should be based on one's incapacity to work. The petitioner asserts that since he was unable to engage in a gainful employment even after the statutory 120/240-day period, he is entitled to permanent disability benefits.<sup>[28]</sup>

The petitioner also contends that the third-doctor-referral provision is not applicable because it was by operation of law that he became permanently disabled. He avers that the assessment of the company-designated physician is merely an interim one, and not a final and categorical evaluation as to his disability. He insists that the failure of the company-designated physician to submit a final and categorical disability assessment within the 120/240-day period conclusively presumes that he is permanently disabled. Lastly, the petitioner argues that the temporary disability assessment of the company-designated physician is not controlling in awarding disability benefits.

In their Comment<sup>[29]</sup> dated June 30, 2016, the respondents emphasize that the absence of findings coming from a third doctor makes the certification of the company-designated physician controlling in determining the disability grading of the petitioner's injury. Accordingly, the findings of the company-designated physician should prevail.

Moreover, the respondents submit that the mere lapse of 120/240-day period does not automatically vest an award of permanent disability benefits upon the petitioner.