

# FIRST DIVISION

[ G.R. No. 246497, December 05, 2019 ]

## RAMON R. MAGADIA, PETITIONER, V. ELBURG SHIPMANAGEMENT PHILIPPINES, INC. AND ENTERPRISES SHIPPING AGENCY SRL, RESPONDENTS.

### D E C I S I O N

**LAZARO-JAVIER, J.:**

#### The Case

This petition for review on *certiorari*<sup>[1]</sup> seeks to set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 146244 ,<sup>[2]</sup> viz.:

1. Decision<sup>[3]</sup> dated May 23, 2018, finding petitioner entitled to partial disability benefits; and
2. Resolution<sup>[4]</sup> dated March 6, 2019, denying petitioner's motion for reconsideration.

#### The Antecedents

Petitioner Ramon Magadia filed a complaint against respondents Elburg Shipmanagement Philippines, Inc. and Enterprises Shipping Agency SRL for permanent and total disability benefits and other monetary claims.

#### Petitioners Version

On September 20, 2013, respondents hired him as messman to work on board MV FD Honorable for a period of nine (9) months. On May 19, 2014, he was carrying a garbage bag to the ship's upper deck when he fell from the stairway. His shoulder hit the steel railings and his body rammed against the floor. He was immediately administered first aid and brought to a hospital in Rio de Janeiro. He had an x-ray on his spine and pelvis and got diagnosed with "Herniated Nucleus Pulposus, Lumbosacral Vertebrae. "<sup>[5]</sup>

On May 23, 2014, he got repatriated to Manila and reported to the company-designated physician for examination and treatment. After undergoing a magnetic resonance imaging (MRI) test, company-designated physician Dr. William Chuasuan, Jr. diagnosed him with "L4-L5 and L5-S1 Disc Dessication; Left Forearm Contusion." He was recommended for physical therapy.<sup>[6]</sup>

On September 24, 2014, the company-designated physician issued petitioner an initial disability grading of 11 after he found that petitioner's trunk was "within

[functional range]."[7]

After further medical treatment, the company-designated physician issued Medical Report dated October 3, 2014, viz.:

The specialist opines that patient has already reached maximum medical treatment.

If (the) patient is entitled to disability, his final disability grading is Grade 11 - loss of 1/3 lifting power of the trunk.[8]

Petitioner, thereafter, continued with his treatment and therapy. On January 6, 2015, the company-designated physician assessed his condition as resolved and stopped his treatment. His back pain, however, persisted. Thus, the next day, he sought the opinion of another physician, Dr. Misael Jonathan A. Ticman .[9]

In his Disability Report dated February 4, 2015, Dr. Ticman found:

x x x [I]n spite of the physical therapy done and medications given(,) the symptoms [persisted and] prognosis is not good. I am therefore recommending Permanent Disability and that he is unfit to work as a seaman in any capacity. "[10]

Consequently, he demanded from respondents payment of full disability benefits, but to no avail.[11]

### ***Respondent's Version***

After a series of examination and rehabilitation, the company-designated physician assessed petitioner's disability as Grade 11 due to "loss of 1/3 lifting power of the trunk." Petitioner was, therefore, only entitled to partial permanent disability benefits equivalent to the company-designated physician's assessment. Too, the company-designated physician's assessment should be given more weight over petitioner's personal doctor since the latter failed to observe the proper procedure by referring the matter to a third doctor.[12]

### ***The Labor Arbiter's Ruling***

In his Decision, Labor Arbiter Eduardo DJ. Carpio granted petitioner's claim for permanent and total disability benefits, viz.:

WHEREFORE, premises considered, judgment is hereby rendered ORDERING the respondents to pay, jointly and severally, herein complainant the amount of US\$60,000.00 representing his permanent total disability compensation and attorney's fees equivalent to ten percent (10%) of the total monetary award or their peso equivalent at the prevailing exchange rate on the actual date of payment.

All other claims are dismissed for lack of factual or legal basis.[13]

## **The NLRC Ruling**

On appeal, the NLRC modified. It declared that petitioner was only entitled to partial disability benefits, viz.:

WHEREFORE, premises considered, the Appeal is GRANTED and the July 17, 2015 Decision is MODIFIED in that complainant is declared to be partially disabled only with a disability rating of Grade 11.

Respondents are ordered to solidarily pay complainant the compensation corresponding to Grade 11 disability, to be paid in Philippine peso at the exchange rate prevailing at the time of payment and 10% thereof as attorney's fees .<sup>[14]</sup>

xxx xxx xxx

Petitioner sought a reconsideration but the same was denied.<sup>[15]</sup>

## **The Court of Appeals' Ruling**

On petitioner's appeal by certiorari, the Court of Appeals affirmed. In addition, it imposed a legal interest of six (6%) per annum on the amount awarded from the date of finality of the decision until it was fully paid. The Court of Appeals ruled that the company-designated physician issued a final assessment of petitioner's condition on October 3, 2014 or 133 days since he got repatriated and found his illness equivalent to a disability grading of 11. Since there was a final assessment of petitioner's condition within the 120/240-day period, the company-designated physician's finding was controlling .<sup>[16]</sup>

By Resolution dated March 6, 2019, petitioner's motion for reconsideration was denied.<sup>[17]</sup>

## **The Present Petition**

Petitioner now asks the Court to reverse the Court of Appeals' assailed dispositions. He maintains that the company-designated physician failed to make a final 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.

For their part, respondents counter that the company-designated physician issued Medical Report dated October 3, 2014, finding petitioner's illness equivalent to Grade 11. The assessment was issued within 240 days from the time he got repatriated, thus, the same negates petitioner's claim for permanent total disability compensation. Besides, disability benefits are not dependent on the loss of a seafarer's earning capacity but on the degree of illness suffered.

## **Core Issue**

Is petitioner entitled to permanent total disability benefits?

### **Ruling**

***Orient Hope Agencies, Inc. v . Jara***<sup>[18]</sup> set out 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.
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification .<sup>[19]</sup>

Based thereon, two (2) requisites must concur for a determination of a seafarer's medical condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive. Thus, ***Orient Hope*** aptly held:

While the assessment of a company-designated physician *vis-a-vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability , it is still subject to the periods prescribed in the law. x x x <sup>[20]</sup>

Here, petitioner was repatriated on May 23, 2014. After undergoing medical treatment, the company-designated physician issued an interim Grade 11 disability on September 24, 2014. Petitioner's back pain persisted which required him to continue with his medical treatment. Per Medical Report dated October 3, 2014, the company-designated physician issued petitioner a final disability grading of 11, 133 days since he got evaluated. Indeed, the diagnosis was laid down within the extended period of 240 days. But the case does not stop here. The rules also require that the company designated physician's assessment on a seafarer's illness be final and definitive.

Section 20(B) of POEA-SE C<sup>[21]</sup> provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite. A final and definite disability