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# THIRD DIVISION

# [ G.R. No. 195878, January 10, 2018 ]

## MAGSAYSAY MITSUI OSK MARINE, INC., KOYO MARINE, CO. LTD., AND CONRADO DELA CRUZ, PETITIONERS, VS. OLIVER G. BUENAVENTURA, RESPONDENT.

## DECISION

**MARTIRES, J.:**

This petition for review on certiorari seeks to reverse and set aside the 18 March 2010 Decision[1] and the 28 February 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 109150 which reversed and set aside the 19 January 2009 Resolution[3] of the National Labor Relations Commission *(NLRC).* The NLRC affirmed the 30 May 2008 Decision[4] of the Labor Arbiter *(LA).*

### THE FACTS

Petitioner Magsaysay Mitsui OSK Marine, Inc. *(Magsaysay),* on behalf of its principal Koyo Marine Co. Ltd., hired respondent Oliver G. Buenaventura *(Buenaventura)* as an ordinary seaman on board the vessel Meridian. The contract was for nine months, with a basic monthly salary of $403.00 and subject to the JSU collective bargaining agreement *(CBA).*[5]

On 25 January 2007, Buenaventura met an accident wherein a mooring winch crushed his right hand. As a result, he suffered a fracture of the right first metacarpal bone and open fracture of the right second metacarpal bone, which required emergency surgical procedures both done in Japan.[6]

On 21 February 2007, Buenaventura was medically repatriated. He was referred to the Maritime Medical Service, the company-designated clinic, and was attended to by Dr. Stephen Hebron *(Dr. Hebron).* Dr. Hebron then referred Buenaventura to Dr. Celso Fernandez *(Dr. Fernandez),* an orthopedic surgeon. On 3 August 2007, Dr. Hebron declared Beunaventura fit to work after undergoing conservative management, continuous rehabilitation physiotheraphy, and occupational therapy. Nevertheless, Buenaventura still felt pain in his hand especially during cold weather. [7]

In a medical certificate dated 12 September 2007, Dr. Hebron stated that according to Dr. Fernandez, the MC plates in Buenaventura's right hand might be contributing to the pain. According to him, the removal of the MC plates would cost around P70,000.00, which would not be shouldered by Magsaysay. This prompted Buenaventura to consult Dr. Rodolfo Rosales *(Dr. Rosales)* who found him unfit to work and recommended a ten-week physical therapy. He also consulted Dr. Venancio

Garduce, Jr. *(Dr. Garduce),* an orthopedic surgeon, who diagnosed him with: (a) inability to extend the right hand; (b) weak grip, grasp and pinch; (c) healed flap, dorsum of hand; (d) deformity of the thumb right hand atrophy; and (e) traumatic arthritis, carpo-metacarpal joints in his right hand. Dr. Garduce opined that it would be difficult for Buenaventura to continue to work as a seaman.[8]

Based on the differing opinions of his physicians of choice, Buenaventura filed a complaint for disability compensation under the CBA, recovery of medical expenses; moral, exemplary, and nominal damages; and attorney's fees.

***The LA Ruling***

In its 30 May 2008 decision, the LA dismissed Buenaventura's complaint. It ruled that Buenaventura was not suffering from total and permanent disability because he was already declared fit to work by the company-designated physician on 3 August 2007. The LA explained that the company-designated physician's declaration of fitness, absent any showing of bad faith or bias, should be considered as the only basis in awarding disability benefits. It highlighted that before Buenaventura was declared fit to work, he had been subjected to appropriate medical attention and that his condition was improving to normal. The LA disregarded the findings of Buenaventura's physicians of choice because they had examined him only for a short period of time. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the Complaint for lack of merit.
>
> All other claims are likewise denied for want of any basis.[9]

Aggrieved, Buenaventura appealed before the NLRC.

***The NLRC Ruling***

In its 19 January 2009 resolution, the NLRC affirmed the LA decision. It opined that Buenaventura was not entitled to disability benefits because he was found fit to work by the company-designated physician. The NLRC highlighted that the company-designated physician was in the best position to determine Buenaventura's fitness to work considering the extensive examination and treatment conducted on him. It agreed that the findings of Buenaventura's own doctors held little weight because there was insufficient evidence to show that they had conducted a thorough examination and treatment of Buenaventura. The NLRC noted that the lone medical report was issued only after a single consultation. The dispositive portion reads:

> **WHEREFORE,** the foregoing considered, the instant appeal is **DISMISSED** for lack of merit. The Decision appealed from is **AFFIRMED** in its entirety.[10]

Buenaventura moved for reconsideration but it was denied by the NLRC in its 23 March 2009 Resolution.[11] Undeterred, he appealed before the CA.

***The CA Ruling***

In its assailed 18 March 2010 decision, the CA reversed the NLRC decision. The appellate court explained that the seafarer is not precluded from getting a second opinion as to his condition for claiming disability benefits. As such, it disagreed that the only basis for awarding disability benefits are the findings of the company-designated physician and that it is not conclusive upon the seafarer or the court.

Further, the CA elucidated that Buenaventura was entitled to total and permanent disability benefits because he was declared fit to work only after six months from the time he was medically repatriated. It pointed out that under present jurisprudence, a seafarer is entitled to permanent disability benefits when he is unable to perform his job for more than 120 days from the time of his repatriation. Thus, it ruled:

> **WHEREFORE,** premises considered, the Resolutions dated January 19, 2009 and March 23, 2009 rendered by the NLRC are **SET ASIDE**. Private respondents are **ORDERED** to pay petitioner the following amounts:
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> 1) Seventy-Eight Thousand Seven Hundred Fifty US Dollars (US$78,750.00) as permanent and total disability benefits;
> 2) Thirty Thousand Pesos (Php30,000.00) as nominal damages; and
> 3) Attorney's fees equivalent to ten percent (10%) of the total monetary award.[12]

Magsaysay moved for reconsideration but it was denied by the CA in its assailed 28 February 2011 resolution.

Hence, this appeal raising the following:

**ISSUES**

**I**

> **WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW IN AWARDING FULL AND PERMANENT DISABILITY BENEFITS TO THE RESPONDENT DESPITE THE FACT THAT RESPONDENT WAS DECLARED FIT TO WORK BY THE COMPANY-DESIGNATED PHYSICIAN. THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN SHOULD BE GIVEN WEIGHT IN ACCORDANCE WITH THE RULINGS OF THIS HONORABLE COURT IN THE CASES OF MAGSAYSAY MARITIME CORP. ET AL. V. VELASQUEZ, (G.R. No. 179802, 14 NOVEMBER 2008) AND MARCIANO L. MASANGCAY V. TRANS-GLOBAL MARITIMIE AGENCY, INC. AND VENTONOR NAVIGATION, INC.,**

**(G.R. No. 172800, 17 OCTOBER 2008);**[13]

**II**

**WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW IN CONSIDERING THAT MR. OLIVER BUENAVENTURA IS TOTALLY AND PERMANENTLY DISABLED BECAUSE HE WAS ALLEGEDLY SICK OR UNABLE TO WORK FOR MORE THAN 240 DAYS DESPITE THE FACT THAT (1) POEA CONTRACT MEASURES DISABILITY BENEFITS IN TERMS OF GRADING AND NOT BY DAYS; AND (2) RESPONDENT WAS DECLARED FIT TO WORK WITHIN 240 DAYS;**[14] **AND**

**III**

**WHETHER THE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE ERROR OF LAW WHEN IT AWARDED NOMINAL DAMAGES AND ATTORNEY'S FEES DESPITE ABSENCE OF BAD FAITH ON THE PART OF PETITIONERS IN DENYING RESPONDENT'S MONEY CLAIMS.**[15]

## OUR RULING

The petition is meritorious.

***Notice and opportunity to explain satisfies administrative due process***

The Labor Tribunals opined that the findings of the company-designated physicians should be the sole basis for disability benefits and could be set aside only when medical conclusions were tainted with bad faith and malice. On the other hand, the CA explained that the findings of the company-designated physician are not conclusive upon the seafarer or the courts.

The Court agrees with the appellate court.

It is true that the company-designated physician will have the first opportunity to examine the seafarer and thereafter issue a certification as to the seafarer's medical status. On the basis of the said certification, seafarers then would be initially informed if they are entitled to disability benefits or not. Seafarers, however, are not precluded from challenging the diagnosis of the company-designated physicians should they disagree.

In fact, such mechanism is categorically provided for under the Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC),* as revised. Section 20(A) thereof states that should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer and the latter's decision shall be final and binding between the parties.

Undoubtedly, seafarers have the option to seek another opinion from a physician of their choice and, in case the latter's findings differ from that of the company-designated physician, the conflicting findings shall be submitted to a third-party doctor, as mutually agreed upon by the parties.

Thus, if the reasoning of the labor tribunals were to be adopted, the options available to seafarers would be restricted as they could only challenge the findings of the company-designated physician if there was malice or bad faith. Under the POEA-SEC, the presence of bad faith or malice on the part of company-designated physicians is not required before a seafarer may seek the opinion of another doctor.

***Failure to refer conflicting findings to a third doctor***

Unsatisfied with the findings of the company-designated physician, Buenaventura consulted with Dr. Rosales and Dr. Garduce, both of whom found him unfit to continue work as a seafarer. Considering the conflicting findings of his physician of choice, Buenaventura was bound to initiate the process of referring the findings to a third-party physician by informing his employer of the same,[16] which is mandatory considering that the POEA-SEC is part and parcel of the employment contract between seafarers and their employers.[17] Instead of following the procedure set forth under Section 20 of the POEA-SEC, Buenaventura initiated the present complaint for disability benefits without informing Magsaysay of the differing medical opinions of Dr. Rosales and Dr. Garduce.

In *Magsaysay Maritime Corporation v. Simbajon,*[18] the Court reiterated the effects of failing to comply with the requirement of referral to third-party physicians:

> The glaring disparity between the findings of the petitioners' designated physicians and Dr. Vicaldo calls for the intervention of a third independent doctor, agreed upon by petitioners and Simbajon. In this case, no such third-party physician was ever consulted to settle the conflicting findings of the first two sets of doctors. After being informed of Dr. Vicaldo's unfit-to-work findings, Simbajon proceeded to file his complaint for disability benefits with the LA. This move totally disregarded the mandated procedure under the POEA-SEC requiring the referral of the conflicting medical opinions to a third independent doctor for final determination. Dr. Vicaldo, too, is a medical practitioner not unknown to this Court, as he has issued certifications in several disability claims that proved unsuccessful.
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> In *Philippine Hammonia,* we have ruled that **the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits.** We explained:
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> > The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. **The petitioners could not have possibly caused the non-referral to a third doctor because they were not aware**