

FIRST DIVISION

[G.R. No. 211187, April 16, 2018]

**SCANMAR MARITIME SERVICES, INC. AND CROWN
SHIPMANAGEMENT, INC., PETITIONERS, VS. CELESTINO M.
HERNANDEZ, JR., RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*^[1] assails the June 27, 2013 Decision^[2] and February 5, 2014 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 124003, which dismissed the Petition for *Certiorari* filed therewith and thus affirmed the December 9, 2011 Decision^[4] and February 2, 2012 Resolution^[5] of the National Labor Relations Commission (NLRC) ordering petitioners Scanmar Maritime Services, Inc. and Crown Shipmanagement, Inc. (collectively petitioners) to pay respondent Celestino M. Hernandez, Jr. (respondent) US\$66,000.00 as disability benefits and attorney's fees.

Antecedent Facts

On July 2, 2009, petitioner Scanmar Maritime Services, Inc., for and in behalf of its foreign principal, petitioner Crown Shipmanagement, Inc., entered into a Contract of Employment^[6] with respondent for a period of nine months as Able Seaman for the vessel *Timberland*. Respondent underwent the pre-employment medical examination (PEME), where he was declared fit for work.^[7] He was deployed on August 3, 2009 and boarded the vessel the next day.

During the course of his employment, respondent experienced pain in his inguinal area and pelvic bone. The pain continued for weeks radiating to his right scrotum and right medial thigh. He informed the Captain of the vessel and was brought to a hospital in Sweden on February 3, 2010 where he was found unfit to resume normal duties. Consequently, respondent was medically repatriated to the Philippines on February 6, 2010.^[8]

On February 8, 2010, respondent was referred to the company-designated physician at Metropolitan Medical Center for medical evaluation. He was diagnosed to have *Epididymitis, right, Varicocele, left*^[9] and was recommended to undergo Varicocelectomy, a surgical procedure for the management of his left Varicocele.^[10] On March 26, 2010, the company-designated Urological Surgeon, Dr. Ed R. Gatchalian (Dr. Gatchalian), performed Varicocelectomy on him at the Metropolitan Medical Center^[11] after obtaining clearance from a Cardiologist.^[12] The procedure was a success and respondent was immediately discharged the following day.^[13] Thereafter, he continuously reported to Dr. Gatchalian for medical treatment and

evaluation. He was subjected to numerous laboratory examinations, medication, and was advised to refrain from engaging in strenuous activities, such as lifting, while recovering.

Despite continuing medical treatment and evaluation with the company-designated physician, respondent filed on July 20, 2010 a complaint with the NLRC for permanent disability benefits, damages, and attorney's fees against petitioners. On August 12, 2010, respondent consulted his own physician, Dr. Antonio C. Pascual (Dr. Pascual), a Cardiologist, who diagnosed him with *Essential Hypertension, Stage 2, Epididymitis, right, Varicocoele, left, S/P Varicocoelectomy* and certified him medically unfit to work as a seaman.^[14]

Meanwhile, on August 24, 2010, Dr. Gatchalian pronounced respondent fit to resume sea duties.^[15]

Proceedings before the Labor Arbiter

In his position paper, respondent averred that for almost a year since November 2009, when he first sought medical attention for his work-related illness on board the vessel, he failed to earn wages as a seafarer. Due to loss of his earning capacity as a result of his unfitness for further sea duties, as attested by the medical findings of his own physician, Dr. Pascual, respondent claimed that he was entitled to permanent total disability benefits amounting to US\$60,000.00 pursuant to the POEA-SEC as well as moral, exemplary and compensatory damages for P500,000.00 each and 10% attorney's fees.

Petitioners, on the other hand, disclaimed respondent's entitlement to any disability compensation or benefit since his illness was not an occupational disease listed as compensable under the POEA-SEC^[16] and was not considered work-related. Petitioners maintained that respondent was never declared unfit to work nor was he rendered permanently, totally or partially, disabled, averring that Dr. Gatchalian, the urological surgeon who closely monitored respondent's condition, already declared him fit to resume sea duties. Petitioners insisted that Dr. Gatchalian's assessment should prevail over that rendered by Dr. Pascual, who examined respondent only once. Further, according to petitioners, respondent's failure to consult a third doctor who is tasked to settle the inconsistencies in the medical assessments in accordance with the provisions of the POEA-SEC was fatal to his cause.

In a Decision^[17] dated April 1, 2011, the Labor Arbiter awarded respondent total and permanent disability compensation in the amount of US\$60,000.00 and attorney's fees in the amount of US\$6,000.00. The Labor Arbiter found that respondent's illness had a reasonable connection with his work condition as an Able Seaman, thus, was work-related and compensable. At any rate, his illness, although not listed as occupational disease, enjoyed the disputable presumption of work-connection or work-aggravation under the POEA-SEC. The Labor Arbiter then found credence in the assessment made by respondent's physician, Dr. Pascual, who certified respondent to be suffering not only from Varicocoele but also from Stage 2 Hypertension, an illness which was likewise work-related.

Proceedings before the National Labor Relations Commission

Petitioners appealed to the NLRC ascribing serious error on the findings of the Labor Arbiter. Petitioners maintained that respondent's Varicocoele was not work-related; that respondent was declared fit for sea duties by Dr. Gatchalian whose declaration correctly reflected respondent's condition as compared to Dr. Pascual who was not even a specialist in urological disorders; that no third doctor was sought to challenge Dr. Gatchalian's assessment in violation of the procedure laid down in the POEA-SEC; that respondent's alleged hypertension could not be made as basis for the payment of disability benefits as there was no proof that he acquired or suffered such illness during the term of his employment; and that respondent was not entitled to attorney's fees.

In a Decision^[18] dated December 9, 2011, the NLRC dismissed the appeal and affirmed the Decision of the Labor Arbiter. The NLRC sustained the Labor Arbiter's finding that respondent was permanently and totally disabled; that there was causal connection between the work of respondent and his illnesses (Varicocoele and Stage 2 Hypertension); and that Dr. Pascual's certification deserves more weight than the certification of Dr. Gatchalian that was issued after 120 days which, by operation of law, transformed respondent's disability to total and permanent, as was pronounced in the case of *Quitoriano v. Jebsens Maritime, Inc.*^[19]

Petitioners filed a Motion for Reconsideration^[20] of the NLRC Decision but was denied in the NLRC Resolution^[21] of February 2, 2012.

Proceedings before the Court of Appeals

Petitioners filed a Petition for *Certiorari* with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Mandatory Injunction to enjoin the enforcement and execution of the NLRC judgment. Petitioners attributed grave abuse of discretion on the NLRC in affirming the Labor Arbiter's award of US\$60,000.00 as disability benefits and attorney's fees of US\$6,000.00.

The CA, in a Decision^[22] dated June 27, 2013, dismissed petitioners' Petition for *Certiorari* and held that the NLRC did not commit any grave abuse of discretion in rendering its assailed rulings. The CA found that there was no error in the NLRC's appreciation of the causal connection between respondent's work as a seaman and his illnesses; that the NLRC correctly upheld the assessment of Dr. Pascual based on its inherent merit; and that the NLRC properly considered respondent's disability as total and permanent based on the Court's ruling in the *Quitoriano* case. The CA likewise found justification in the award of attorney's fees since respondent was forced to litigate to protect his interest.

Petitioners sought reconsideration^[23] of the CA Decision. In a Resolution^[24] dated February 5, 2014, petitioners' motion was denied.

Issues

Hence, petitioners filed the present Petition for Review on *Certiorari*, arguing that:

THE FILING OF THE COMPLAINT WAS PREMATURE AND SHOULD HAVE BEEN DISMISSED OUTRIGHT BECAUSE

A. THE COMPANY-DESIGNATED PHYSICIAN HAD NOT YET GIVEN A DISABILITY ASSESSMENT/FIT TO WORK ASSESSMENT WITHIN THE ALLOWABLE 240-DAY PERIOD WHEN RESPONDENT FILED THE CASE. THERE IS THEREFORE NO ASSESSMENT TO CONTEST OR TO HAVE A CAUSE OF ACTION AGAINST.

B. EVEN ASSUMING ARGUENDO THAT THE COMPLAINT WAS NOT PREMATURELY FILED ON THE ABOVE GROUND, RESPONDENT'S FAILURE TO COMPLY WITH THE POEA SEC ON THE MATTER OF REFERRING THE MEDICAL ASSESSMENT TO AN INDEPENDENT AND THIRD PHYSICIAN RENDERED THE FILING OF THE COMPLAINT PREMATURE.

II.

ABSENT ANY SERIOUS DOUBTS AS TO THE LEGITIMACY AND FAIRNESS OF THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN, THE COURT OF APPEALS HAS NO AUTHORITY WHATSOEVER TO DISREGARD THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN IN FAVOR OF SEAFARER'S ONE-TIME PHYSICIAN OF CHOICE.

CREDENCE SHOULD BE THEREFORE ACCORDED TO THE ASSESSMENT OF THE COMPANY DESIGNATED PHYSICIAN ESPECIALLY SINCE THE LATTER IS A SPECIALIST AS COMPARED TO THE SEAFARER'S PHYSICIAN OF CHOICE WHO POSSESSES DIFFERENT MEDICAL SPECIALIZATION.

III.

RESPONDENT IS NOT ENTITLED TO ATTORNEY'S FEES.^[25]

Petitioners contend that respondent's complaint was prematurely filed and lacked cause of action as there was no medical assessment yet by the company-designated physician and the 240-day allowable period within which the company-designated physician may assess respondent had not yet lapsed at the time it was filed. Petitioners assert that the mere lapse of the 120-day period does not automatically vest an award of full disability benefits, as it may be extended up to 240 days if the seafarer requires further medical attention, as in this case. Moreover, the lack of a third doctor opinion is fatal to respondent's cause.

Petitioners, thus, posit that the timely fit to work assessment of Dr. Gatchalian, which was rendered after close monitoring of respondent's condition, should have been accorded probative weight by the labor tribunals, rather than the pronouncement of Dr. Pascual, who examined respondent only once and who is not even a specialist in urological disorders.

Our Ruling

The Court finds merit in the Petition.

The filing of respondent's complaint was premature. Respondent is not entitled to total and permanent disability compensation.

We find serious error in both the rulings of the NLRC and CA that respondent's disability became permanent and total on the ground that the certification of the company-designated physician was issued more than 120 days after respondent's medical repatriation. As correctly argued by petitioners, the 120-day rule has already been clarified in the case of *Vergara v. Hammonia Maritime Services, Inc.*, [26] where it was declared that the 120-day rule cannot be simply applied as a general rule for all cases in all contexts.

Article 192(c)(1) of the Labor Code provides that:

Art. 192. Permanent total disability. – x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

The Rule referred to in this Labor Code provision is Section 2, Rule X of the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code, which states:

Sec. 2. *Period of Entitlement* – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Section 20B(3) of the POEA-SEC, meanwhile provides that:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed