

## THIRD DIVISION

[ G.R. No. 237487, June 27, 2018 ]

**ALDRINE B. ILUSTRICIMO, PETITIONER, V. NYK-FIL SHIP  
MANAGEMENT, INC./INTERNATIONAL CRUISE SERVICES, LTD.  
AND/OR JOSEPHINE J. FRANCISCO, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### **Nature of the Case**

This petition for review under Rule 45 of the Rules of Court seeks to reverse and set aside the September 27, 2017 Decision<sup>[1]</sup> and February 15, 2018 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 149491 entitled "*NYK-Fil Ship Management, Inc./International Cruise Services Ltd, Josephine J. Francisco v. Aldrine B. Ilustricimo*." The assailed rulings modified the amount of disability benefits awarded by the Panel of Voluntary Arbitrators<sup>[3]</sup> (VA) of the National Mediation and Conciliation Board (NCMB) to petitioner Aldrine B. Ilustricimo in its October 25, 2016 Decision.<sup>[4]</sup>

#### **Factual Antecedents**

Petitioner was engaged by respondent International Cruise Services Ltd., through respondent NYK-Fil Ship Management, Inc. (NYK), as a Quarter Master onboard its vessels from 1993 to 2014. His last employment with the respondents was on board the vessel *MV Crystal Serenity* last April 2014. Prior to his embarkation, petitioner underwent a routine Pre-Employment Medical Examination and was declared physically fit to work.

In November 2014, while *MV Crystal Serenity* was on its way to Florida, USA, petitioner started experiencing gross hematuria, or blood in his urine. He reported the matter to his superiors and was given antibiotics for suspected urinary tract infection. Due to his medical condition, petitioner was brought to a hospital in Key West, Florida, where he was subjected to a CT Scan. The results revealed the presence of three polypoid masses in his bladder. Petitioner was medically repatriated on November 22, 2014 and immediately referred to the company-accredited hospital for treatment. Dr. Nicomedes Cruz (Dr. Cruz), the company-designated doctor, diagnosed him with "urothelial carcinoma of the urinary bladder, low grade" or "bladder cancer."<sup>[5]</sup>

After undergoing a series of chemotherapy sessions and operations, petitioner's attending doctors assessed him with an *interim* disability rating of Grade 7 in a report<sup>[6]</sup> dated March 6, 2015. In the same report, Dr. Cruz noted that risk factors for petitioner's illness include "occupational exposure to aromatic amines and cigarette smoking." Despite the interim disability grading given, the company doctor noted, in a report<sup>[7]</sup> dated June 23, 2015, that petitioner still complains of "on and

off hypogastric pain." He was then advised to undergo repeat cystoscopy. On June 30, 2015,<sup>[8]</sup> Dr. Cruz issued petitioner with a final assessment of Grade 7 disability-moderate residuals or disorder of the intra-abdominal organ.

In September 2015, petitioner underwent another operation using his own funds.<sup>[9]</sup> This prompted him to secure the opinion of another physician, Dr. Richard Combe, who diagnosed him with bladder mass and declared him unfit to work due to his need to undergo instillation chemotherapy and cystoscopy every three months, thus:<sup>[10]</sup>

Remarks/Recommendations: Pt. is being  
scheduled  
for instillation  
chemotherapy  
[&]cystoscopy  
every 3  
months  
hence unfit to  
work

Thereafter, petitioner, thru counsel, sent respondents a letter<sup>[11]</sup> dated October 16, 2015, claiming total and permanent disability benefits. Petitioner further declared in the said letter his willingness to undergo another examination to prove the extent of his disability being claimed, thus:

Dear MS FRANCISCO:

This pertains to the disability case of the above-named seafarer who was medically repatriated due to medical reasons-Urothelial Carcinoma of the Urinary Bladder. He underwent series of chemotherapy. However, despite such medical treatment, he remains incapacitated until today.

He consulted an independent medical expert and was found to be still suffering from the said permanent disability and declared seafarer is already totally UNFIT to resume his work as a seaman. A copy of the Second Medical Report is hereto attached and marked as ANNEX A as well as the records of his surgical operation last October 6, 2015.

As a result thereof, the seafarer is claiming total and permanent disability benefits in accordance with the law and his CBA. He is willing to undergo another test/examination to confirm his present disability which has incapacitated him from resuming his work as a seaman. Please be guided accordingly.

For the Firm:

(SIGNED)  
ATTY. ARNOLD M. BURIG SAY  
Counsel for Seafarer

Notwithstanding petitioner's communication, respondents failed to respond, prompting him to file a complaint for total and permanent disability before the NCMB.

### **Ruling of the VA**

On October 25, 2016, the VA issued a Decision in favor of the petitioner and, accordingly, ordered respondents to pay him total and permanent disability benefits in the amount of USD95,949.00. The dispositive portion of the judgment states:

WHEREFORE, premises considered, respondents are hereby ordered to pay herein complainant the sum equivalent to Grade 1 disability benefits for ratings under the Collective Bargaining Agreement in the amount of NINETY FIVE THOUSAND NINE HUNDRED FORTY NINE US DOLLARS (USD95,949.00).

All other claims are DENIED and dismissed for lack of merit under the law, jurisprudence and equity.

SO ORDERED.

Aggrieved, respondents elevated the case via a petition for review before the CA.

### **Ruling of the CA**

The CA granted the petition in the assailed Decision and adjudged respondents liable only for partial permanent disability benefits under the parties' Collective Bargaining Agreement amounting to USD40,106.98, thus:

WHEREFORE, premises considered, the petition is GRANTED. The October 25, 2016 Decision of the Panel of Arbitrators of the National Conciliation Mediation Board (NCMB) in MVA-026-RCMB-NCR-176-05-11-2015 is REVERSED and SET ASIDE. Petitioners NYK-FIL SHIP MANAGEMENT INC./INTERNATIONAL CRUISE SERVICES, LTD. And JOSEPHINE J. FRANCISCO are ORDERED to JOINLY AND SEVERALLY pay respondent Aldrine B. Ilusticimo the amount of FORTY THOUSAND ONE HUNDRED SIX DOLLARS AND NINETY-EIGHT CENTS (US\$40, 106.98) or its equivalent amount in Philippine currency at the exchange rate prevailing during the time of payment.

The award shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

SO ORDERED.

According to the CA, while petitioner claims to have secured the opinion of a second doctor, no such medical certification from the adverted personal doctor is extant in the records of the case, and that only a copy of the October 16, 2015 letter-request from petitioner's counsel seeking total and permanent disability benefits from the respondents was submitted. The CA likewise agreed with the respondents' postulation that, even on the assumption that petitioner had indeed secured the opinion of a second doctor, petitioner failed to seek the opinion of a third doctor as mandated under the 2010 Philippine Overseas Employment Agency – Standard Employment Contract (POEA-SEC). Thus, without the second doctor's certification and the non-referral of the case to a third doctor, the CA ruled that petitioner's disability benefits must be based on the final disability assessment made by the company-designated doctor.

Petitioner moved for, but was denied, reconsideration by the CA. Hence, this petition.

Petitioner claims that the CA's reliance on the Grade 7 disability rating given by the company-designated doctor is based on the flawed finding that he failed to secure the opinion of a second doctor. He likewise faults the respondents for the non-referral of the case to a third doctor as required under Section 20(A)(3) of the POEA-SEC since the latter ignored his request to undergo another medical examination to prove the extent of the disability being claimed.

Respondents, for their part, insist that petitioner's illness is not compensable since it is not listed as an occupational disease under Section 32 of the POEA-SEC. Assuming that petitioner's condition is disputably presumed to be work-related, the burden lies upon him to prove that his work contributed/aggravated his illness, a burden which, according to the respondents, he failed to discharge. And even if petitioner's illness is compensable, respondents maintain that the disability rating of Grade 7 given by its doctor should prevail in view of his failure to prove that he sought a second medical opinion and to seek for the opinion of a third doctor, as provided for in the POEA-SEC.

### **Issue**

The sole issue for the consideration of the Court is whether or not the CA erred in ruling that petitioner is not entitled to total and permanent disability benefits.

### **Our Ruling**

We grant the petition.

#### ***Petitioner's illness is work-related***

For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.<sup>[12]</sup> The same provision defines a work-related illness is "any sickness as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied." Meanwhile, illnesses not mentioned under Section 32 of the POEA-SEC are disputably presumed as work-related.<sup>[13]</sup> Notwithstanding the presumption of work-relatedness of an illness under Section 20(A)(4), the seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease.<sup>[14]</sup>

Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer.<sup>[15]</sup> It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.<sup>[16]</sup>

In the present case, it is undisputed that petitioner suffered an illness while on board the M/V Crystal Serenity. What needs to be determined is whether petitioner's illness is work-related, and, therefore, compensable.

According to the VA, petitioner suffered from "cancer of the urinary bladder" due to the malignant tumors found in his urinary bladder.<sup>[17]</sup> The VA then considered the illness as work-related based on Section 32<sup>[18]</sup> of POEA-SEC. The VA added that even if petitioner's illness is not among those specifically mentioned in Section 32, the same is deemed work-related since the risk factors for the illness include occupational exposure to aromatic amines as stated on the company doctors' medical certification.

The CA, meanwhile, concluded that petitioner failed to discharge the burden of proving the causality of his illness and his work with the respondents. Coupled with the petitioner's failure to seek the opinion of a third doctor, the appellate court gave more weight and credence to the Grade 7 final disability rating given by the respondents' doctors.

As a rule, the Court does not review questions of fact, but only questions of law, in an appeal by *certiorari* under Rule 45 of the Rules of Court.<sup>[19]</sup> It is not to reexamine and assess the evidence on record, whether testimonial and documentary.<sup>[20]</sup> Nevertheless, this rule admits of certain exceptions,<sup>[21]</sup> such as when the findings of fact of the lower courts or tribunals are conflicting, as in the instant case.

We are inclined to agree with the findings of the VA.

The Medical Abstract/Discharge Summary<sup>[22]</sup> dated January 23, 2015 contains the following entries:

Discharge Impression or Diagnosis:

**BLADDER CANCER**

s/p TUR-BT (2014)

s/p INTRAVESICAL CHEMOTHERAPY (1<sup>st</sup> SESSION, 01/22/15)  
(Emphasis supplied)

While the medical report dated March 6, 2015 issued by respondents' doctor states:

1. The prognosis is fair.
2. The plan of further management, estimated length and cost of further treatment will depend on the result of the recommended cystoscopy and bladder tumor check.
3. The **risk factors are occupational exposure to aromatic amines and cigarette smoking.**
4. The interim disability grading under the POEA schedule of disabilities is Grade 7 – moderate residuals or disorder of the intrabdominal organ.<sup>[23]</sup> (Emphasis supplied)

No less than respondents' doctor diagnosed the petitioner with bladder cancer and opined that his occupation exposed him to elements that increased his risk of contracting the illness. As found by the VA, petitioner was employed by the respondents for 21 years. It is, therefore, not implausible to conclude that petitioner's work may have caused, contributed, or at least aggravated his illness. Given the company doctors' conclusion and the afore-stated facts, the burden on the part of petitioner to prove the causality of his illness and occupation had been eliminated.