

SECOND DIVISION

[G.R. No. 229153, July 09, 2018]

EDILBERTO R. PALERACIO, PETITIONER, VS. SEALANES MARINE SERVICES, INC., SPLIETHOFF GROUP MANILA, INC. AND/OR CHRISTOPHER DINO C. DUMATOL AND CAPT. RUBEN AGMATA, RESPONDENTS.

DECISION

PERALTA, J.:

For the resolution of this Court is the petition for review on *certiorari* filed by herein petitioner Edilberto R. Paleracio (*Paleracio*) assailing the Decision^[1] dated June 17, 2016 and the Resolution^[2] dated November 22, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 135418, which annulled and set aside the Decision^[3] and Resolution,^[4] dated January 30, 2014 and February 28, 2014, respectively, of the National Labor Relations Commission (*NRLC*) in NLRC NCR CASE NO. 02-02169-13.

The facts follow.

On November 21, 2011, Sealanes Marine Service, Inc., for and on behalf of Spliethoff Beheer B.V. (*respondents*), hired Paleracio as Able Bodied Seaman for a period often (10) months with basic monthly salary of US\$575.00.

Paleracio was on duty on September 5, 2012 when the steel chain disengaged and hit his right arm. On September 25, 2012, he was brought to the hospital in Kotka, Finland and was referred to Dr. Teemu Partanen (*Dr. Partanen*). He was found to have contusion/bruise in his upper right arm. Dr. Partanen recommended that his right antebrachium be x-rayed.^[5]

Subsequently, he arrived in Manila on September 27, 2012. He reported the pain in his right arm to the manning agency and was referred to Dr. Roehl Salvador and Dr. Jose Bautista (*Dr. Bautista*) of the Manila Doctors Hospital. He underwent hematology tests^[6] and x-ray. His x-ray result reads:

RIGHT RADIUS/ULNA: 08 October 2012

A dynamic compression plate anchored by 7 screws is applied to the radial shaft, rendering good anatomic alignment of the fracture fragments therein.

The rest of the visualized osseous structures and joint spaces are intact.
^[7]

On October 8, 2012, Paleracio was diagnosed with a neglected radial shaft fracture on his right arm with impending malunion, and underwent a corrector osteotomy

with radial plating on the same day. He was discharged the next day and underwent therapy under Dr. Bautista. On February 7, 2013, he consulted Dr. Misael Jonathan Ticman (*Dr. Ticman*), a private specialist, after the respondents allegedly discontinued his treatment after four months with no improvement. On February 8, 2013, he filed a complaint for total and permanent disability benefit, damages and attorney's fees against respondents. In the disability report^[8] dated March 14, 2013, Dr. Ticman declared that he is unfit to work as a seaman in any capacity. A portion of the report reads:

Physical Examination

- conscious, coherent, ambulatory
- stable vital signs
- (+) surgical scar, right forearm
- (+) tenderness, right forearm on pronation-supination
- (+) difficulty in lifting heavy objects

Diagnosis

Fracture, Radial shaft, right, in impending malunion s/p ORIF, plating

DISABILITY RATING

Based on the history and physical examination on the patient, in spite of the Surgery, Physical therapy, and medications given, symptoms persist, the prognosis is not good. I am therefore recommending **Permanent Disability** and that he is **unfit** to work as a seaman in any capacity.

For their part, respondents denied liability for Paleracio's permanent total disability compensation. They alleged that he was repatriated due to a finished contract, and reported to them five days upon his arrival.^[9] There was doubt that the pain was work-related since there was no accident report. Nevertheless, he was referred to the company-designated physicians, and was diagnosed with malunited radial shaft fracture. He filed the complaint for disability benefits while he was still under treatment. In the Medical Report^[10] dated March 21, 2013, Dr. Bautista declared him fit to return to work, which reads:

21 March 2013

To: Dr. Roehl Salvador
Re: Edilberto Paleracio

Diagnosis: Malunited Radial Shaft Fracture, Right S/P Radial Plating (8 Oct., '12)

It's been 5 1/2 months since Mr. Paleracio's surgery.
He complains of occasional right forearm pain on l[i]fting heavy objects.

He has full range of motion and normal strength of the extremity.

He is fit to return to work without restrictions.

In a Decision^[11] dated October 17, 2013, the Labor Arbiter (LA) dismissed the complaint for lack of merit. The LA held that Paleracio failed to submit himself to a medical examination within three working days upon his return as provided by the Philippine Overseas Employment Administration Standard Employment Contract Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA-SEC). The March 14, 2013 Disability Report did not indicate the disability grading. Besides, the malunited radial shaft fracture is not a life-threatening injury and usually heals if given proper medication and treatment. Thus, the company-designated doctor's medical opinion was given more weight due to the extensive treatment given to him.

On appeal, the NLRC reversed the decision of the LA and awarded disability compensation in accordance with AMOSUP Collective Bargaining Agreement (CBA). It held that the findings favorable to the complainant must be adopted in case of conflict in the determination of fitness to work between the company-designated physician and the seafarer's physician. It also ruled that the disability should be understood less on its medical significance but more on the loss of earning capacity. Permanent disability means the inability of a worker to perform his job for more than 120 days. The dispositive portion of the decision reads:

WHEREFORE, the October 7, 2013 Decision of Labor Arbiter Gaudencio P. Demaisip, Jr. is hereby **REVERSED** and a new Decision is hereby rendered ordering respondents-appellees, jointly and severally, to pay complainant-appellant by way of permanent and total disability compensation the amount of **US\$80,000.00**, pursuant to the POEA Standard Contract in relation to the AMOSUP Collective Bargaining Agreement and attorney's fees of 10% of the total award.

SO ORDERED.^[12]

In the June 17, 2016 Decision, the CA granted the petition for *certiorari* filed by respondents. The CA gave more probative weight to the company-designated doctor's assessment since Dr. Ticman's disability assessment was not supported by any diagnostic test and procedures, and was apparently based only on physical examination. The non-compliance with the conflict resolution provided by the POEA-SEC results in the affirmance of the fit-to-work certification of the company-designated physician. The *fallo* of the decision reads:

WHEREFORE, the instant petition is **DISMISSED**. The Decision dated January 30, 2014 and Resolution dated February 28, 2014 of the National Labor Relations Commission in LAC No. 01-000014-14 (OF2-[M]-02-02169-13), are hereby **ANNULLED** and **SET ASIDE**.

Private respondent's Complaint for permanent and total disability compensation is **DISMISSED** for lack of merit.

SO ORDERED.^[13]

In a Resolution dated July 27, 2016, the CA amended the dispositive portion of the decision, to wit:

WHEREFORE, the instant petition is **GRANTED**. The Decision dated January 30, 2014 and Resolution dated February 28, 2014 of the National

Labor Relations Commission in LAC No. 01-000014-14 (OF2-[M]-02-02169-13), are hereby **ANNULLED** and **SET ASIDE**.

Private respondent's Complaint for permanent and total disability compensation is **DISMISSED** for lack of merit.

SO ORDERED.^[14]

Upon denial of his Motion for Reconsideration, Paleracio elevated the matters before this Court raising the issue:

THE CA COMMITTED GRAVE ERROR IN DENYING TO PETITIONER THE PERMANENT TOTAL DISABILITY BENEFITS ON THE FOLLOWING GROUNDS:

I. THE PETITIONER FAILED TO SUBSTANTIATE HIS CLAIM FOR PERMANENT DISABILITY BENEFITS;

II. THE PETITIONER FAILED TO AVAIL OF THE CONFLICT RESOLUTION PRIOR TO FILING THE COMPLAINT.^[15]

The Court finds the instant petition partially meritorious.

As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. In exceptional cases,^[16] however, the Court may delve into and resolve factual issues when, among others, there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when the lower courts come up with conflicting positions, as in this case. Hence, the Court is constrained to review and resolve the factual issues in order to settle the controversy.

The CA ruled that the conflict in the findings should be referred to a third doctor agreed jointly by the parties. In absence of referral to a third doctor, the findings of the company-designated physicians should be affirmed. Paleracio did not offer any reason what prevented him from following the procedure. He deprived the company-designated physicians the chance to rebut his own doctor's findings by filing the complaint a day after consulting the latter.

As per Paleracio's Contract^[17] dated March 12, 2012, his employment is covered by the 2010 POEA-SEC. Pertinent portion of Section 20 (A) of the POEA-SEC reads:

Section 20-A. *Compensation and Benefits for Injury or Illness.* —

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

3. x x x

For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when

he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (emphasis supplied)

x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician, and (2) the appointed doctor of the seafarer refuted such assessment.^[18]

It was held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician.^[19] However, it should be pointed out that a seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods.^[20] In this case, the Court observes that there was no referral to a third doctor, and that the private physician's disability report was issued before the company-designated physician's certification. Hence, there is a need to examine whether the fit-to-work assessment is valid and timely.

The Labor Code and the Amended Rules on Employees Compensation (AREC) provide that the seafarer is considered to be on temporary total disability during the 120-day period within which the seafarer is unable to work. If the temporary total disability lasted continuously for more than 120 days, except as otherwise provided in the Rules, then it is considered as a total and permanent disability.^[21] However, the temporary total disability period may be extended up to a maximum of 240 days when the sickness still requires medical attendance beyond the 120 days but not to exceed 240 days.

The medical assessment of the company-designated physician is not the alpha and