

THIRD DIVISION

[G.R. No. 213731, August 01, 2018]

**C.F. SHARP CREW MANAGEMENT, INC./MANNY SABINO AND/OR
NORWEGIAN CRUISE LINE LTD., PETITIONERS, VS. JOWELL P.
SANTOS, RESPONDENT.**

DECISION

GESMUNDO, J.:

This is an appeal by *certiorari* seeking to reverse and set aside the May 20, 2014 Decision^[1] and the July 30, 2014 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 132805. The CA reversed and set aside the July 30, 2013 Decision and September 24, 2013 Resolution of the National Labor Relations Commission (NLRC) and reinstated the November 23, 2012 Decision of the Labor Arbiter (LA), a case for permanent and total disability benefits of a seafarer.

The Antecedents

Jowell P. Santos (*respondent*) was hired as an environmental operator by C.F. Sharp Crew Management, Inc., (*CF Sharp*) for and in behalf of its principal, Norwegian Cruise Line, Ltd., collectively known as petitioners, on board the vessel "MIS Norwegian Gem" for a period of nine (9) months. He was deployed on September 9, 2011.

Sometime in December 2011, respondent experienced dizziness, over fatigue, frequent urination and blurring of the eyesight. He was brought to the ship's clinic for initial medical examination and was found to have elevated blood sugar and blood pressure. He was immediately referred to Cape Canaveral Hospital in Miami, Florida, USA, where he was found to have a history of diabetes and has been smoking a pack of cigarettes daily for ten (10) years.

On January 12, 2012, respondent was repatriated to the Philippines. The next day, or on January 13, 2012, he was immediately referred to CF Sharp's company-designated physicians at the Sachly International Health Partners Clinic (*SIHPC*). The physicians subjected respondent to different tests and treatments, which were recorded in several medical reports. It was confirmed that he had Diabetes Mellitus II and hypertension. Respondent was advised to continue his medications.

On May 4, 2012, respondent was examined by a nephrologist who noted that he was asymptomatic with a blood pressure (*BP*) of 120/70. His urinalysis and serum creatinine were normal. Thus, he was cleared from a nephrological standpoint and was again advised to continue his maintenance medications.

Thereafter, after 118 days from repatriation, the company-designated physicians issued a certification stating that respondent's condition was not work-related and

that his final disability grading assessment for hypertension and diabetes was Grade 12.^[3]

Unconvinced, respondent consulted Dr. May S. Donato-Tan (*Dr. Donato-Tan*), a specialist in Internal Medicine and Cardiology. In her medical certificate, Dr. Donato-Tan noted that respondent had high blood pressure and uncontrolled diabetes mellitus. She also opined that respondent's condition was work-related due to the pressure in the cruise ship, which elevated his blood pressure, and that the food therein was not balanced, which elevated his blood sugar. She concluded that respondent was permanently disabled to discharge his duties as a seafarer.^[4]

Hence, respondent filed a complaint for disability and sickness benefits with damages before the LA.

The LA Ruling

In its decision dated November 23, 2012, the LA ruled in favor of respondent. It found that respondent suffered from permanent and total disabilities due to his hypertension and diabetes. The LA also awarded the maximum benefits provided by the Collective Bargaining Agreement (*CBA*) between petitioners and respondent. The dispositive portion of the LA decision reads:

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered, ordering respondents C.F. Sharp Crew Management, Inc., and/or Norwegian Cruise Line LTD., to pay, jointly and severally, complainant Jowell P. Santos the aggregate amount of NINETY ONE THOUSAND SIX HUNDRED THIRTY THREE AND 66/100 US DOLLARS (US\$91,633.66) or its Philippine peso equivalent at the time of actual payment, representing permanent disability benefits and sickness wages, plus ten percent (10%) thereof as and for attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.^[5]

Aggrieved, petitioners appealed to the NLRC.

The NLRC Ruling

In its decision dated July 30, 2013, the NLRC modified the decision of the LA. It held that respondent did not suffer from a permanent and total disability because he failed to prove that the diabetes and hypertension he suffered were work-related. The NLRC gave credence to the medical assessment and finding of the company-designated physicians, which stated that respondent only suffered a partial disability of Grade 12. It also found that respondent was entitled to a sickness pay. The NLRC disposed the case in this wise:

WHEREFORE, foregoing considered, the appeal is partly **GRANTED**. The decision dated 23 November 2012 is **MODIFIED**. The grant of total and permanent disability benefits is set aside but the award of sickness pay in the sum of One Thousand Six Hundred Thirty Three US Dollars and 66/100 (US\$1,633.66) remains. In addition, appellants are ordered to

pay appellee the sum of Five Thousand Two Hundred TwentyFive US Dollars (US\$5,225.00) as financial assistance for his illness.

SO ORDERED.^[6]

Respondent filed a motion for reconsideration but it was denied by the NLRC in its resolution dated September 24, 2013.

Undaunted, respondent filed a petition for *certiorari* before the CA arguing that the NLRC committed grave abuse of discretion.

The CA Ruling

In its decision dated May 20, 2014, the CA reversed and set aside the NLRC ruling and reinstated the LA ruling. It held that respondent suffered from permanent and total disabilities because of his hypertension and diabetes. The CA opined that respondent's diseases were work-related because these were caused by the unhealthy working conditions in petitioners' ship. It also ruled that respondent had the right to consult his independent physician of choice to determine the degree of his disability. The CA concluded that since 120 days had passed but respondent had not returned to work, he is entitled to permanent and total disability benefits. The *fallo* of the CA decision states:

WHEREFORE, premises considered, the petition is hereby GRANTED. The assailed decision dated July 30, 2013 and the resolution dated September 24, 2013 of the National Labor Relations Commission (Fifth Division) in NLRC NCR-OFW-M-04-06542-12, NLRC LAC No. 01-000071-13 are hereby REVERSED and SET ASIDE, and the decision dated November 23, 2012 of the Labor Arbiter is REINSTATED.

SO ORDERED.^[7]

Petitioners moved for reconsideration but it was denied by the CA in its resolution dated July 30, 2014.

Hence, this petition, chiefly anchored on the following issues:

I

WHETHER THE PROVISIONS OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) STANDARD EMPLOYMENT CONTRACT (SEC) WERE COMPLIED WITH BY THE PARTIES.

II

WHETHER RESPONDENT IS ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS DUE TO HIS HYPERTENSION AND DIABETES.

Petitioners argue that the medical certificate of respondent's physician of choice should not have been considered because the conflicting medical assessments were not referred to a third doctor under the POEA-SEC. They also assert that diabetes is

not listed as a work-related illness under Section 32-A of the POEA-SEC, hence, not compensable. Petitioners further claim that respondent's hypertension was not compensable because it does not involve an end organ damage for essential hypertension. They likewise highlighted that the mere lapse of the 120-day period does not result in the grant of total and permanent disability benefits because the timely medical findings of the company-designated physicians must be respected. As the said physician only gave a Grade 12 disability, petitioners conclude that respondent is only entitled to US\$5,225.00.

In his Comment,^[8] respondent countered that the petition raises questions of fact, which cannot be entertained by the Court. He also argued that diabetes is a compensable disease, which was aggravated by his hypertension. Respondent claimed that his diseases were presumed to be work-related and petitioners failed to prove that there was no reasonable casual connection with the illnesses sustained and the work performed.

In their Reply,^[9] petitioners reiterated that mere inability to work for a period of 120 days does not automatically entitle a seafarer to permanent and total disability benefits. They argued that respondent's allegation that his work conditions in their cruise ship aggravated his condition was completely unsubstantiated. Petitioners concluded that, at best, respondent is only entitled to a Grade 12 disability benefit under the POEA-SEC.

The Court's Ruling

The Court finds the petition meritorious.

The law that defines permanent and total disability of laborers would be Article 192 (c) (1) of the Labor Code, which 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 in the Rules;

On the other hand, the rule referred to - Rule X, Section 2 of the Amended Rules on Employees' Compensation, which implemented Book IV of the Labor Code (*IRR*) 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 anytime 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.

These provisions should be read in relation to the POEA-SEC wherein Sec. 20(A) (3) states:

In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.^[10]

In *Crystal Shipping, Inc. v. Natividad*^[11] (*Crystal Shipping*), the Court ruled that "[p]ermanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."^[12] Thereafter, litigant-seafarers relied on *Crystal Shipping* to claim permanent and total disability benefits because they were incapacitated to work for more than 120 days.

In *Vergara v. Hammonia Maritime Services, Inc.*^[13] (*Vergara*), however, the Court declared that the doctrine in *Crystal Shipping* - that inability to perform customary work for more than 120 days constitutes permanent total disability - is not absolute. By considering the law, the POEA-SEC, and especially the IRR, *Vergara* extended the period within which the company-designated physician could declare a seafarer's fitness or disability to 240 days. Further, the disability grading issued by the company-designated physician was given more weight compared to the mere incapacity of the seafarer for a period of more than 120 days.

Recently, in *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*^[14] (*Elburg*), it was confirmed that the *Crystal Shipping* doctrine was not binding because a seafarer's disability should not be simply determined by the number of days that he could not work. Nevertheless, it was held that the determination of the fitness of a seafarer by the company-designated physician should be subject to the periods prescribed by law. *Elburg* provided a summation of periods when the company-designated physician must assess the seafarer, to wit:

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