THIRD DIVISION

[G.R. No. 217362, November 19, 2018]

HENRY DIONIO, PETITIONER, VS. TRANS-GLOBAL MARITIME AGENCY, INC., GOODWOOD SHIPMANAGEMENT PTE LTD., AND MICHAEL ESTANIEL, RESPONDENTS.

DECISION

J. REYES, JR., J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated September 25, 2014 and Resolution[2] dated March 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129223, which reversed and set aside the Decision dated November 29, 2012 and Resolution dated January 22, 2013 of the National Labor Relations Commission (NLRC) and reinstated the Decision dated August 29, 2012 of the Labor Arbiter (LA) in NLRC NCR Case (M) 11-16849-11.

Antecedents

Henry Dionio (Dionio) was engaged by Trans-Global Maritime Agency, Inc. (Trans-Global) as Bosun on board the vessel MIT "Samco Asia" for and in behalf of Goodwood Shipmanagement, PTE, Ltd. (Goodwood). His Contract of Employment with Trans-Global provided that he shall earn a basic monthly salary of US$730.00.

He embarked on February 2, 2011. On February 25, 2011, Dionio experienced dizziness, slurred speech, chest pain, difficulty in breathing, repeated vomiting and minor loss of strength in his right hand. He was brought to a hospital in Cape Town, South Africa on March 7, 2011 where he was diagnosed with a "possible transient Ischaemic Attack/Labyrinthitis." On March 8, 2011, he was repatriated to the Philippines and was referred to the Metropolitan Medical Center (MMC) for further evaluation and treatment.

The initial evaluation conducted on March 9, 2011 considered "Transient Ischemic Attack." He was later referred to a neurologist and an ear, nose and throat specialist. He received medical attention and treatment as reflected in Medical Reports dated March 28, April 18, 2027, May 10, 18, June 8, 9, and September 5, 2011 issued by Dr. Frances Hao-Quan. Dionio's last diagno is was "Bilateral Cerebellar Infarct" with a disability grading of 10.

On November 10, 2011, Dionio filed a complaint against Trans-Global, Goodwood and Michael Estaniel (hereafter "respondents") for permanent disability benefits, as well as actual, moral and exemplary damages, plus attorney's fees.

On March 14, 2012, Dionio consulted Dr. Antonio Pascual of the Philippine Heart Center who diagnosed him with "S/P Cerebrovascular Disease, Bilateral Cerebellar

Infarct" and concluded that he was medically unfit to work as seaman.

Dionio also consulted Dr. Enrique Puentespina of The Lord's Hospital in Calvario, Meycauayan, Bulacan whose undated neurological assessment stated that Dionio had "Vertebro Bassilar Insufficiency."[3]

LA Ruling

On August 29, 2012, the LA ordered respondents to jointly and severally pay Dionio US$10,075.00 representing disability benefits based on a grade 10 disability rating. The claims for actual, moral and exemplary damages as well as attorney's fees were denied for lack of basis.[4]

NLRC Ruling

Dionio elevated the case to the NLRC on appeal, which rendered its Decision on November 29, 2012, reversing the LA and awarding total and permanent disability benefits in the amount of US$89,100.00, plus attorney's fees equivalent to 10% of the monetary award.

The NLRC held that: (1) permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform; (2) Dionio's work as "bosun" was at risk because of the probability of another stroke; (3) the two medical reports issued by authority and under note of the Medical Coordinator of MMC opine that the prognosis to return to sea duties is guarded due to risk of another cerebrovascular event; (4) there was inconsistency in the disability grading and the detailed medical assessment of complainant's attending physicians; (5) Dionio is rendered unable to fully perform his job because the strenuous effort required by the nature of his work could trigger another cerebrovascular attack; (6) the disability grading is not reflective of Dionio's actual physical condition; and (7) there is no mention whether or not they are adopting the grading of 10. According to the NLRC, respondents' failure to issue an assessment grading before the 120-day period meant that the disability is permanent and total.

Respondents filed a Motion for Reconsideration which was denied by the NLRC on January 22, 2013.[5]

CA Ruling

Dissatisfied, respondents Trans-Global/Goodwood filed a Petition for *Certiorari* with the CA asserting that the NLRC erred in reversing the LA and in giving weight to the findings of Dionio's doctors. Respondents claimed that the findings of the company doctor as to the extent and severity of the seafarer's disability must be sustained.[6]

On September 25, 2014, the CA rendered its Decision:

> WHEREFORE, the petition is GRANTED. The Decision dated November 29, 2012 and the Resolution dated January 22, 2013 of the Second Division of the National Labor Relations Commission in LAC No. 09-000797-12 are REVERSED and SET ASIDE. The August 29, 2012 Decision of the Labor

Arbiter in NLRC NCR Case (M) 11-16849-11 is REINSTATED.

SO ORDERED.[7]

Dionio filed a Motion for Reconsideration which was denied by the CA on March 5, 2015.[8]

Issues before the Court

Dionio is now before the Court raising the issues of:

1. Whether or not the Honorable Court of Appeals erred in ruling that petitioner [failed] to appoint a third physician to resolve the conflicting opinions of the company-designated physician and his doctor's second opinion's [sic] disability assessment?

2. Whether or not the Honorable Court of Appeals erred in affirming the self-serving and fraudulent assessment of the company-designated physician of grade 10 even if the said physician expressly prohibits petitioner from resuming further sea service due to risk of cerebrovascular attack?

3. Whether or not the Honorable Court of Appeals erred in applying the law on permanent and total disability cited under Articles 191-193 of the Labor Code, as amended?

4. Whether or not the Honorable Court of Appeals erred in misapplying the CBA to accident resulting to disability even if the existing CBA also covers work-related illness resulting to disability?

5. Whether or not the Honorable Court of Appeals erred in deleting the award of attorney's fees even if respondents committed gross negligence, which is tantamount to bad faith when they failed to accord petitioner of immediate medical intervention on 25 February 2011 and waited until 07 March 2011 when he totally sustained stroke that resulted to permanent and total disability?[9]

Dionio argues that the CA erred in ruling that it is mandatory to appoint a third physician to resolve a conflict of findings between the company-designated physician and the doctor chosen by the seafarer. According to Dionio, the assessment of a company-designated physician may be disputed by the opinion of a physician chosen by the seafarer. The option of engaging the opinion of a third doctor is merely directory and not mandatory.[10]

He adds that the CA erred in setting aside the opinion of the company-designated doctor who stated that he was expressly prohibited to return to work. The company doctor noted that he needed "regular medical check-ups and [should] continue his medications to probably prevent another stroke episode." The company doctor further said that "prognosis to return to sea duties is guarded due to risk of another cerebrovascular event."[11]

Dionio cites the Philippine Overseas Employment Agency's (POEA) Contract which

recognizes the prerogative of a seafarer to request a second opinion and consult a physician of his choice. In this case, Dionio's chosen doctor, Dr. Pascual, found him "medically unfit to work in any capacity as a seaman." Following the Department of Health's Medical Guidelines, Administrative Order No. 2007-005, July 27, 2007, Dionio is automatically disqualified to resume further sea service as he is permanently unfit for work at sea.[12]

Dionio argues that the Resolutions of the CA are contrary to the test of permanent total disability, which is the disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do. He failed to be gainfully employed from February 25, 2011 until November 9, 2011, based on his "convalescing or recuperation period" as certified by the company-designated physician in a Medical Certificate dated October 5, 2011 which was submitted before the Social Security System (SSS). There were 257 days from the onset of his illness on February 25, 2011 up to November 9, 2011. Thus, following the rulings in *Vergara v. Hammonia Maritime Services, Inc.*[13] and *Kestrel Shipping Co., Inc. v. Munar*,[14] his disability assessment of partial disability of grade 10 was converted or made permanent after the lapse of 240 days.

Dionio also assails the CA's finding that the Collective Bargaining Agreement (CBA) is applicable only to accidents resulting to disability despite the fact that it also expressly provides for permanent disability as a result of work-related illness. He, likewise, questions the deletion of attorney's fees in his favor, given that he was compelled to litigate and incur expenses to protect his interests under the law.[15]

In their Comment, respondents maintain that the CA correctly ruled that the company doctor is the one who is tasked with the determination of a seafarer's disability or fitness. Dionio filed a complaint even before seeking a second opinion, thus, he contested the findings of the company doctor even without any substantial basis. The report of Dionio's doctor was also based on a one-time examination as opposed to the company doctor who treated him for six months.[16]

Respondents further contend that contrary to petitioner's assertion, a seafarer is not entitled to disability benefits if he did not comply with the procedure on appointment of a third doctor under the employment contract. The CA ruled that in the POEA Contract, as well as the CBA of the parties, it is the company-designated doctor who is mandated to determine the degree of disability or fitness to work of a seafarer. As held in *OSG Shipmanagement Manila, Inc. v. Pellazar*,[17] since the seafarer was responsible for the non-referral to a third doctor, with his failure to inform the manning agency that he would be consulting his own doctor, he should suffer the consequences of the absence of a binding third opinion, and the disability assessment issued by the company-designated doctors should be upheld against the seafarer's physician of choice.[18]

Respondents argue that supposing the CBA is indeed applicable in this case, based on Sec. 20.1.4 thereof, the seafarer must be certified permanently unfit for further sea service in any capacity by the company doctor for the medical unfitness clause to apply. They also assert that mere inability to work does not justify total and