

## THIRD DIVISION

[ G.R. No. 211335, March 27, 2017 ]

**MST MARINE SERVICES (PHILIPPINES), INC., THOME SHIP  
MANAGEMENT PTE LTD. AND/OR ALFONSO RANJO DEL  
CASTILLO, PETITIONERS, VS. TEODY D. ASUNCION,  
RESPONDENT.**

### DECISION

**REYES, J.:**

Before this Court is a Petition for Review on *Certiorari* <sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to annul and reverse the Decision<sup>[2]</sup> dated June 28, 2013 and the Resolution<sup>[3]</sup> dated February 7, 2014 of the Court of Appeals (CA) in CA-G.R. SP. No. 118686, which affirmed the grant of total and permanent disability benefits to respondent Teody Asuncion (Asuncion).

#### Facts

In January 2009, MST Marine Services (Philippines), Inc. (MST Marine), on behalf of its foreign principal Thome Ship Management Pte Ltd. (Thome Ship), hired Asuncion as a GP1 Motorman on board the vessel M/V Monte Casino for a period of nine months.<sup>[4]</sup>

Asuncion left the Philippines on January 22, 2009 to commence his employment.<sup>[5]</sup> On July 16, 2009, while he was on his way to the Poop Deck of the vessel, he lost his balance and fell down on the floor. He felt pain on his back which persisted despite intake of pain relievers. Thus, he was brought to a doctor in Kakinada, India, who recommended his repatriation for further medical evaluation and treatment.<sup>[6]</sup>

Upon Asuncion's arrival in Manila on August 22, 2009, he was referred to Dr. Nichomedes Cruz (Dr. Cruz), a company-designated physician at the Manila Doctors Hospital.<sup>[7]</sup> He was given the initial diagnosis of "Lumbosacral Strain,"<sup>[8]</sup> but to rule out other possibilities, Asuncion was subjected to a magnetic resonance imaging (MRI) which showed normal results. Still, Asuncion complained of low back pains.<sup>[9]</sup> He was advised to undergo electromyography-nerve conduction velocity (EMG-NCV) and to continue with his medications.<sup>[10]</sup> Results of his EMG-NCV turned out normal.<sup>[11]</sup> Upon Asuncion's request, his therapy sessions were done at St. Paul's Hospital in Iloilo City.<sup>[12]</sup>

On January 6, 2010, during the period he was still undergoing therapy, Asuncion filed a complaint for total and permanent disability benefits with the Labor Arbiter (LA).<sup>[13]</sup>

Two months later, on March 10, 2010, Asuncion consulted Dr. Nicanor F. Escutin (Dr. Escutin), a private physician, who, after a physical examination, diagnosed him with

"Chronic Low Back Pain Syndrome, Lumbar Spondylolisthesis L4/L5 and Degenerative Joint Disease." According to Dr. Escutin, Asuncion has a permanent disability and is unfit for sea duty in whatever capacity as a seaman.<sup>[14]</sup>

On March 16, 2010, Dr. Cruz assessed Asuncion with Disability Grade 8 - moderate rigidity of two-thirds loss of motion or lifting power of the trunk.<sup>[15]</sup>

### **Ruling of the LA**

On July 30, 2010, the LA rendered a Decision,<sup>[16]</sup> disposing of the case in this wise:

**WHEREFORE**, premises considered, judgment is hereby rendered declaring [MST Marine, Thome Ship and/or Alfonso Ranjo del Castillo] liable to pay, jointly and severally, [Asuncion's] permanent total disability benefits of **US\$60,000.00** plus **US\$6,000.00** as 10% attorney's fees, in Philippine currency at the prevailing rate of exchange at the time of payment.

All other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>[17]</sup>

The LA considered Asuncion to have suffered from a total and permanent disability since he was not declared fit to work despite more than six months of treatment.<sup>[18]</sup>

MST Marine, Thome Ship and/or Alfonso Ranjo del Castillo (collectively, the petitioners) appealed the decision of the LA with the National Labor Relations Commission (NLRC).<sup>[19]</sup>

### **Ruling of the NLRC**

In a Decision<sup>[20]</sup> dated December 14, 2010, the NLRC affirmed the LA's ruling *in toto*. The NLRC opined that the injury sustained by Asuncion prevented him from performing his usual duties as a seaman; no manning agency or shipping company will dare employ him because of his condition.<sup>[21]</sup> The petitioners' Motion for Reconsideration<sup>[22]</sup> was denied by the NLRC through a Resolution<sup>[23]</sup> dated January 31, 2011.

The petitioners sought recourse with the CA by way of a petition for *certiorari*.<sup>[24]</sup>

In the meantime, Asuncion received the amount of P2,797,080.00 from the petitioners as conditional payment of the judgment award granted by the NLRC. The payment was made to prevent the actual execution of the judgment, without prejudice to the petition for *certiorari* then pending with the CA.<sup>[25]</sup>

### **Ruling of the CA**

On June 28, 2013, the CA promulgated the assailed Decision,<sup>[26]</sup> holding the petitioners liable for total and permanent disability benefits. The CA ratiocinated that the disability grading given by Dr. Cruz cannot be relied upon since he merely referred Asuncion to Dr. Minda Marie S. Cabrera, a physiatrist who actually administered Asuncion's therapy sessions.<sup>[27]</sup>

According to the CA, the disability grading made by the company-designated physician is "not final, binding, or conclusive on the seafarer, the labor tribunals, or the courts."<sup>[28]</sup> Citing jurisprudence, the CA held that the true test of whether Asuncion suffered from total and permanent disability is his inability to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.<sup>[29]</sup> As Asuncion was rendered unfit to discharge his duties as a seaman for more than 120 days from the time he was repatriated to the Philippines on August 22, 2009, his disability is permanent and total.<sup>[30]</sup>

Lastly, the CA gave credence to the disability report issued by Asuncion's private physician, Dr. Escutin, which showed that Asuncion was unfit for sea duty in whatever capacity as a seaman.<sup>[31]</sup>

The CA also affirmed the award of attorney's fees in the amount of US\$6,000.00.<sup>[32]</sup>

The petitioners filed a Motion for Reconsideration,<sup>[33]</sup> but the CA denied the same in its Resolution<sup>[34]</sup> dated February 7, 2014.

Hence, the present petition for review.

### **Issues**

The petitioners present the following issues for resolution:

WHETHER THE CA COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN AWARDING:

- A. Full and permanent disability benefits to Asuncion notwithstanding the Partial Disability Grade 8 assessed by the company-designated physician;
- B. Full and permanent disability benefits to Asuncion for his inability to work for more than 120 days; and
- C. Attorney's fees.<sup>[35]</sup>

Praying for the reversal of the CA rulings and, corollary, the dismissal of Asuncion's complaint, the petitioners aver that under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC),<sup>[36]</sup> in case of permanent total or partial disability of the seafarer due to injury or illness, he shall be compensated in accordance with the schedule of benefits enumerated under Section 32 thereof. Besides, the POEA-SEC provides that the fitness to work or degree of disability, as the case may be, has to be established by the company-designated physician.<sup>[37]</sup>

The petitioners posit that the CA erred in upholding the findings of Asuncion's physician<sup>[38]</sup> and in granting his claim based merely on his inability to work for more than 120 days.<sup>[39]</sup> They claim that Asuncion has no cause of action against them since he consulted his private physician only after the filing of his complaint.<sup>[40]</sup>

In his Comment,<sup>[41]</sup> Asuncion argues that the petitioners raise questions of fact in violation of Rule 45 of the Rules of Court. He stresses that only questions of law may

be raised in a petition for review on *certiorari* because the Court is not a trier of facts.<sup>[42]</sup>

Asuncion also submits that, in any event, the Labor Code's concept of total and permanent disability has been applied to seafarers such that the POEA-SEC is not the sole issuance which governs their rights in the event of work-related death, injury or illness. Under Article 192(c)(1) of the Labor Code, a disability is deemed permanent total if it lasts continuously for more than 120 days.<sup>[43]</sup> Even if the period for treatment was extended to 240 days based on prevailing jurisprudence, Asuncion was never declared fit to work by Dr. Cruz. Asuncion insists that he can no longer perform the tasks of a seafarer, as confirmed by his physician, Dr. Escutin.<sup>[44]</sup> Finally, Asuncion maintains that the petitioners had already paid the judgment award to him voluntarily, rendering this petition moot and academic.<sup>[45]</sup>

In their Reply,<sup>[46]</sup> the petitioners aver that the decision of the NLRC is subject to judicial review of the CA by the filing of a petition for *certiorari* within 60 days from notice of the assailed decision or resolution.<sup>[47]</sup> As such, the CA can still grant the petition, reverse, or modify the NLRC decision. Additionally, the payment to Asuncion was made with the agreement that he should return whatever is due to the petitioners should there be a modification or reversal of the NLRC decision.<sup>[48]</sup>

### **Ruling of the Court**

The petition is denied, but not for the reasons provided in the assailed decision.

To start off, the Court has already held that the mere lapse of the 120-day period itself does not automatically warrant the payment of total and permanent disability benefits.<sup>[49]</sup> In *Vergara v. Hammonia Maritime Services, Inc., et al.*,<sup>[50]</sup> the Court ruled that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability.<sup>[51]</sup>

Besides, permanent disability benefits will be given based on the schedule provided under Section 32 of the POEA-SEC. In *Scanmar Maritime Services, Inc., et al. v. Emilio Conag*,<sup>[52]</sup> the Court reiterated that:

[F]or work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor.<sup>[53]</sup> (Citation omitted)

Moreover, while a seafarer is not precluded from seeking a second opinion or consulting his own physician, if his physician's conclusion is contrary to that of the company-designated physician, the rule is clear that a third physician must be jointly appointed by the employer and the seafarer for a final assessment.<sup>[54]</sup> Without a third-doctor consultation and in the absence of any indication which would

cast doubt on the veracity of the company-designated physician's assessment, the company-designated physician's findings shall prevail.

The Court has observed in *Philippine Hammonia Ship Agency, Inc., et al. v. Dumadag*,<sup>[55]</sup> that the third-doctor-referral provision of the POEA-SEC has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.<sup>[56]</sup> Thus, following *Dumadag*, the Court upheld the findings of the company-designated physician in *Maersk-Filipinas Crewing, Inc. v. Jaleco*,<sup>[57]</sup> where the complainant therein also disregarded the procedure for conflict-resolution under the POEA-SEC.

The same circumstance exists in Asuncion's case - he neither sought to be referred to a third doctor nor did he offer any explanation for his non-observance of this procedure. As a matter of fact, when he filed the complaint for payment of disability benefits on January 6, 2010, he did so without any factual medical basis. To recall, it was only on March 10, 2010 when Asuncion consulted his own physician, whereas, the company-designated physician assessed Asuncion with Disability Grade 8 on March 16, 2010. Thus, at the time he filed his complaint, there was no medical basis supporting his claim at all. Asuncion's complaint was clearly premature.<sup>[58]</sup>

Also, the Court does not agree with the discourse on rejecting the company-designated physician's assessment simply because another specialist administered Asuncion's physical therapy sessions. Based on the records, Dr. Cruz monitored Asuncion's condition as he regularly checked him in his clinic despite the fact that the therapy sessions were held in Iloilo City. Asuncion's diagnostic tests such as MRI and EMG-NCV were conducted in Dr. Cruz's clinic; an orthopedic surgeon working with Dr. Cruz even reviewed Asuncion's MRI results since the latter's alleged symptoms were incompatible with the results of his medical tests.<sup>[59]</sup> These are badges that Dr. Cruz arrived at his assessment based on objective scientific procedures, which Asuncion was not able to successfully controvert.

Finally, Asuncion's own physician, Dr. Escutin, aside from his general and sweeping statement that Asuncion is suffering from a permanent disability, did *not* make any declaration as regards Asuncion's disability grading. As indicated in the medical certificate Dr. Escutin himself had issued, he only conducted a *physical* examination on Asuncion.<sup>[60]</sup> Ironically, in the same certificate where he pronounced Asuncion's disability as total and permanent, he recommended Asuncion to undergo MRI, Computerized Tomography scan of ulnar bone and EMG-NCV to determine the level of injury.<sup>[61]</sup> This is telling, as it reveals that Dr. Escutin made a "final" diagnosis while admitting that further diagnostic tests should still be administered. Under these circumstances, the Court does not find his conclusion to be more reliable than the assessment of the company-designated physician. Besides, there is no evidence that Asuncion undertook any of these procedures with Dr. Escutin despite the latter's recommendation.

The foregoing disquisition notwithstanding, the Court is constrained to rule against the restitution of the award in the amount of P2,797,080.00, which Asuncion received as conditional satisfaction of the judgment of the NLRC.