809 Phil. 881

SECOND DIVISION

[G.R. No. 215595, April 26, 2017]

CAREER PHILIPPINES SHIP MANAGEMENT, INC./VERLOU R. CARMELINO, PETITIONERS, V. NATHANIEL M. ACUB, RESPONDENT.

DECISION

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated November 18, 2014 of petitioners Career Philippines Ship Management, Inc. and/or Verlou R. Carmelino that seeks to reverse and set aside the Decision[1] dated June 19, 2014 of the Court of Appeals (*CA*) granting respondent Nathaniel M. Acub total permanent disability benefits.

The facts follow.

Respondent was hired by petitioner, for and in behalf of its foreign principal, CMA Ships UK Ltd., to work as Ordinary Seaman on board the vessel CMC GM America for nine (9) months with a salary of US$430.00 a month and thus embarked on the said vessel on July 2, 2010.

On November 25, 2010, after the cargo was loaded on board the vessel at Port Rotterdam, Netherlands, respondent inspected the cargo lashings of the container. He went up to the ceiling of the containers and checked the interconnection or lashings so that the cargos will be safe. Due to rain and snow, the surface of the containers were wet and while walking on top of the containers, he slipped and fell on the deck, injuring his right knee. He was given first aid and medicine. The following day, when the vessel arrived at the Port of Hamburg, Germany, he was sent to the hospital where he was operated on and confined for one week. He was recommended for repatriation and on December 5, 2010, he arrived in the Philippines. He was referred to the Seamen's Hospital for further treatment and diagnosed to have Fractured Right Patella. The doctor recommended physical therapy treatment twice a week for 6 treatment sessions.

Respondent, from December 6, 2010 up to June 16 2011, was treated under the care of the company-based physician who assessed respondent's disability as Grade 10. However, respondent claims that despite all the procedures and treatment, he still experienced pain and discomfort; thus, he sought another treatment and opinion from an independent physician, an orthopedic surgeon who concluded that respondent is still not physically fit to undertake the normal duties of a seaman. After more than 10 months since the accident, respondent was still under treatment and medical attention of the company physician. Because of his injury, he can no longer resume his work as seaman.

Considering that respondent's employment was covered by International Transport Workers' Federation Collective Bargaining Agreement (*ITF CBA*), respondent asserts

that he is entitled to disability rating of Grade 1 or an equivalent of US$125,000.00 as disability compensation due an Ordinary Seaman. Thus, he filed his claim for total and permanent disability benefits against petitioners with the Labor Arbiter.

The Labor Arbiter[2] rendered a Decision ordering petitioners, jointly and severally, to pay respondent the peso equivalent of US$10,075.00 pursuant to the Schedule of Disability Allowances under Section 32 of the Philippine Overseas Employment Agency Standard Employment Contract (*POEA SEC*) and based on the rate of exchange at the time of actual payment plus 10% for attorney's fees. The Labor Arbiter ruled that, although the medical treatment of respondent exceeded 120 days, it does not, however, entitle him to permanent total disability benefits as the 120 days upon sign-off is a limitation on the entitlement of the sickness allowance. According to the Labor Arbiter, the POEA SEC mandates that the degree of disability determined by the company-based physician should prevail over that issued by the personal doctor chosen by respondent. Thus, petitioners appealed the case to the National Labor Relations Commission (*NLRC*).

The NLRC reversed the Decision of the Labor Arbiter on the ground that the company doctor's certification cannot be considered as a final assessment of respondent's disability grade because he was still undergoing treatment and therapy; thus, the latter can already be considered as totally and permanently disabled and entitled to a total and permanent total disability of US$125,000.00 pursuant to the POEA SEC and ITF CBA. According to the NLRC, the disability of respondent shall be for more than a year because if the implant will be removed after a year, it only follows that respondent will be operated again to remove the said implant and it would take maybe a month for the wound to heal; hence, he is entitled to Grade 1 disability benefits. It, likewise, ordered the payment of 10% attorney's fees and the amount of P100,000.00 for moral and exemplary damages.

The CA affirmed the NLRC Decision with modification that the disability compensation of US$125,000.00 is reduced to US$89,100.00 in compliance with the CBA, and the award of moral and exemplary damages is disallowed. Respondent is also adjudged as entitled to 10% attorney's fees based on the compensation disability of US$89,100.00. According to the CA, what determines the seafarer's entitlement to permanent disability benefits is his or her inability to work for more than 120 days. The CA also ruled that since the contract of employment is the law between the parties, respondent is, therefore, covered by the International Bargaining Forum-Associated Marine Officers and Seamen's Union of the Philippines/International Maritime Employers' Council Total Crew Cost (*IBF-AMOSUP/IMEC TCC*) Collective Bargaining Agreement wherein it granted a maximum disability benefit rating in the amount of US$89,100.00 in case a seafarer suffers from total and permanent disability. Hence, according to the CA, there was no factual and legal basis for the NLRC to grant a disability benefit rating in the amount of US$125,000.00 since what was provided for in the CBA is the amount of US$89,100.00 only. It also found the award of moral and exemplary damages by the NLRC in the amount of P100,000.00 improper because respondent failed to establish that petitioners were guilty of bad faith in dealing with him. Respondent was also ruled to be entitled with attorney's fees of 10% of US$89,100.00 as he was forced to litigate to seek redress. The MR was denied.

Hence, the present petition with the following grounds:

I. THE COURT OF APPEALS COMMITTED ERROR OF LAW WHEN IT RULED THAT MERE LAPSE OF 120 DAYS FROM REPATRIATION AUTOMATICALLY ENTITLES THE SEAFARER TO GRADE 1 DISABILITY COMPENSATION.

II. THE COURT OF APPEALS COMMITTED ERROR OF LAW WHEN IT UPHELD THE ASSESSMENT OF ACUB'S PHYSICIAN OF CHOICE OVER THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN WITHOUT BASIS IN LAW AND JURISPRUDENCE.

According to petitioners, the CA committed error of law when it ruled that the mere lapse of 120 days from repatriation automatically entitles the seafarer to Grade 1 disability compensation and argue that the CA applied the 1994 and 1996 Standard Employment Contracts instead of the 2000 Standard Employment Contract, as amended, which governs the 2010 employment contract between respondent and petitioners. It is also argued that the CA committed error of law when it upheld the assessment of Acub's physician of choice over the findings of the company-designated physician without any basis in law and jurisprudence.

Respondent, in its Comment[3] dated March 23, 2015, asserts that the CA correctly ruled that petitioner failed to prove the act of tolerance and that the same court ruled the case based on facts and issues decided in the lower court.

The petition lacks merit.

The CA did not err in its ruling neither did it exercise grave abuse of discretion in deciding the case.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[4] this Court ruled:

> In this case, the records show that despite the medication and therapy with the company-designated physician, Quiogue still experienced recurring pains in his injured left foot. The company-designated physician, however, even with the recurring pains, declared him as fit to work. Thus, Quiogue sought the opinion of his own physician, Dr. Escutin, who after the necessary tests and examination declared him unfit for sea duty in whatever capacity as a seaman.
>
> The right of a seafarer to consult a physician of his choice can only be sensible when his findings are duly evaluated by the labor tribunals in awarding disability claims.
>
> Here, the credibility of the findings of Quiogue's private doctor was properly evaluated by the NLRC when it found that the findings of Dr. Escutin who gave Grade 1 disability rating was more appropriate and applicable to the injury suffered by Quiogue. With these medical findings and the fact that Quiogue failed to be re-deployed by petitioners despite the fit to work assessment, Dr. Escutin's assessment should be upheld.
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> Even in the absence of an official finding by Dr. Escutin, Quiogue is deemed to have suffered permanent total disability pursuant to the following guidelines, thus:
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> > Permanent disability is 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.
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> Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of 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 attainments could do.
>
> A total disability does not require that the employee be completely disabled, or totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his or her usual work and earn from it. A total disability is considered permanent if it lasts continuously for more than 120 days.

To recapitulate/from the time Quiogue was medically repatriated on November 19, 2010, he was unable to work for more than 120 days. The company-designated physician was silent on a need to extend the period of diagnosis and treatment to 240 days. Hence, it is the 120-day period under Article 192 (c) (1) of the Labor Code that shall apply in the present case.

The fact that Quiogue was declared "fit to work" by the company-designated physician (with whom he underwent treatment and therapy from November 2010 to April 2011) on April 13, 2011 does not matter because the certification was issued beyond the authorized 120-day period. As aptly ruled by the CA, the assessment of fitness to return to work by the company-designated physician notwithstanding, his disability was considered permanent and total as the said certification was issued **after the lapse of more than 120 days from the time of his repatriation**.

Similarly, there is no merit in petitioners' argument that Quiogue's entitlement to permanent total disability benefits was merely based on his inability to return to work for 120 days. He was entitled to permanent and total disability benefits not solely because of his incapacity to work for more than 120 days, but also because the company-designated physician belatedly gave his definite assessment on Quiogue medical condition, without any justifiable reason therefor.

Moreover, as correctly noted by Quiogue, his entitlement to permanent total disability compensation, as determined by the LA, the NLRC and the CA, was due to his inability to work/return to his seafaring occupation after 120 days until the present time. Significantly, as aptly found by the NLRC, he remained unemployed even after the time he filed the complaint to recover permanent total disability compensation. In the aforecited case of ***Carcedo****, it was stated that should the company-designated physician fail to give his proper medical assessment and the seafarer's medical condition remains unresolved,* ***the seafarer shall be deemed totally and permanently disabled***.[5]

Needless to say, the present case and the case cited above have similarities. In this case, the records show that despite the medication and treatment with the company-designated physician, respondent still experienced pain. Hence,

respondent sought the opinion of his own physician who, after the tests and examination, declared him unfit for work as a seaman. Such opinion of respondent's physician was evaluated by the NLRC, took it into consideration and adjudged that it is more appropriate than the findings of the company-designated physician. This Court ruled that, "[i]f serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, the seafarer should be given the opportunity to assert his claim after proving the nature of his injury."[6]

Petitioners also argue that the CA applied the 1994 and 1996 Standard Employment Contracts instead of the 2000 Standard Employment Contract, as amended, which governs the 2010 employment contract between respondent and petitioners.

Granting that the CA used the period of 120 days as its basis in ruling that respondent is entitled to total permanent disability benefits, it is still a fact that it was only after the lapse of more than six (6) months that the company-designated physician issued a certification declaring respondent to be entitled to a disability rating of Grade 10. This Court in *Elbur Shipmanagement Phils., Inc., v. Quiogue,, Jr.*[7] set the following guidelines, 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;
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> 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;
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> 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
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> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

As earlier mentioned, it was only after the lapse of more than six (6) months that the company-designated physician issued a certification declaring respondent to be entitled to a disability rating of Grade 10, going beyond the period of 120 days, without justifiable reason. As such, since the company-designated physician failed to give his assessment within the period of 120 days, without justifiable reason, respondent's disability was correctly adjudged to be permanent and total.

To have a clearer understanding of the 120-day and 240-day periods, it is apt to revisit the case of *Marlow Navigation Philippines, Inc. v. Osias*[8] where this Court thoroughly discussed the said matter, thus:

> As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil*,, in this wise: "[permanent total disability means disablement of an employee