

## SECOND DIVISION

[ G.R. No. 218242, June 21, 2017 ]

**PAULINO M. ALDABA, PETITIONER, VS. CAREER PHILIPPINES SHIP-MANAGEMENT, INC., COLUMBIA SHIPMANAGEMENT LTD., AND/OR VERLOU CARMELINO, RESPONDENTS.**

### D E C I S I O N

**PERALTA, \*\* J.:**

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated June 4, 2015 of petitioner Paulino M. Aldaba that seeks to reverse and set aside the Decision<sup>[1]</sup> dated November 19, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 127057 reversing the Decision dated July 16, 2012 and Resolution dated August 31, 2012 of the National Labor Relations Commission (NLRC), 2<sup>nd</sup> Division granting petitioner total and permanent disability benefits in the amount of US\$60,000.00.

The facts follow.

Petitioner Paulino M. Aldaba was hired by respondents Career Philippines Shipmanagement Incorporated, and Verlou Carmelino, in behalf of their foreign principal, petitioner Columbia Shipmanagement Ltd., as *Bosun* for work on board the vessel M/V Cape Frio with a basic monthly salary of US\$564.00.

In the course of the performance of his duties, on April 4, 2011, petitioner was accidentally hit by twisted chains made of heavy metal causing him to fall and eventually resulted to a back injury.

Thus, on April 7, 2011, when the vessel was at the Port of Hongkong, petitioner was examined at the Quality Health Care Medical Center by Dr. Thomas Wong, with the examination showing that petitioner suffered a fractured back and was declared unfit to work. As such, he was immediately repatriated.

On April 11, 2011, upon his arrival in Manila, petitioner was referred by respondents to the company-designated physician at NGC Medical Specialist, Inc. for treatment and rehabilitation. The x-ray examination on his back showed a "misalignment of distal sacrum that may suggest fracture." In addition, the x-ray examination on his thoracic spine revealed an "anterior wedging deformity, T11 Osteopenia and early degenerative osseus changes."

The company-designated physician, after the continuing evaluation and medical treatment for 163 days, issued a Medical Report dated September 29, 2011 that reads as follows:

1. The patient has reached maximum medical cure.
2. The final disability grading under the POEA schedule of disabilities is Grade 8 - moderate rigidity or two thirds (2/3) loss of Thereafter, (sic) motion or lifting power of the trunk.

Petitioner, on the other hand, consulted Dr. Misael Jonathan A. Ticman, an Orthopedic Surgeon and Diplomate, Philippine Board of Orthopedics, for an independent assessment of his medical condition and came out with findings showing that petitioner's injury resulted to his permanent disability, thus, making him unfit to work as a seafarer in any capacity.

As a result, petitioner demanded for total disability compensation, but respondents did not heed such demand. Respondents, however, expressed willingness to compensate petitioner the amount corresponding to Grade 8 disability rating based on the medical findings of the company-designated physician.

Aggrieved, petitioner filed a complaint for payment of total and permanent disability benefits, as well as medical expenses, with prayer for damages and attorney's fees against respondents with the Arbitration Board of the NLRC.

The Labor Arbiter, on April 27, 2012, decided in favor of respondents in a Decision<sup>[2]</sup> the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to jointly and severally pay complainant Paulino M. Aldaba disability benefits in the amount of US\$16,795.00 which is equivalent to Grade 8 disability under the POEA Contract, or its peso equivalent at the time of payment.

All other claims are dismissed for lack of merit.

SO ORDERED.

On appeal, the NLRC, in its Decision<sup>[3]</sup> dated July 16, 2012 reversed the Decision of the Labor Arbiter and ruled that petitioner is entitled to a permanent total disability compensation, thus:

WHEREFORE, the Decision dated April 27, 2012 of Labor Arbiter Pablo A. Gajardo is hereby reversed. Respondents, jointly and severally, are hereby ordered to pay Complainant-Appellant, by way of permanent and total disability compensation, the amount of US\$60,000.00, pursuant to the POEA Standard Contract and to pay attorney's fees of 10% of the total award.

SO ORDERED.

After respondents' motion for reconsideration was denied by the NLRC, they elevated the case to the CA. On November 19, 2014, the CA reversed the Decision of the NLRC and reinstated the Decision of the Labor Arbiter, thus:

**WHEREFORE**, premises considered, the present Petition for *Certiorari* is **GRANTED**. The assailed Decision dated July 16, 2012 and the Resolution

dated August 31, 2012 of the National Labor Relations Commission (NLRC)-2<sup>nd</sup> Division in LAC NO. 05-000486-12 are hereby **REVERSED** and **SET ASIDE**. The Decision dated April 27, 2012 of the Labor Arbiter in NLRC-NCR-OFW (M) 12-19022-11 is hereby **REINSTATED**.

**SO ORDERED.**<sup>[4]</sup>

Hence, the present petition wherein the petitioner assigns the following errors:

The Honorable Court of Appeals committed REVERSIBLE ERROR CONTRARY TO EXISTING JURISPRUDENCE in promulgating the assailed decision and resolution

I.

WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS

II.

WHEN IT SOLELY GAVE CREDENCE TO THE CERTIFICATION OF THE COMPANY PHYSICIAN WITHOUT CONSIDERING THE FINDINGS OF PETITIONER'S DOCTOR OF CHOICE.<sup>[5]</sup>

Petitioner insists that he is entitled to permanent and total disability benefits because of his inability to perform his job for more than 120 days, citing a litany of cases decided by this Court. He further argues that the fact that he had been evaluated by respondents' company physicians is substantial compliance with the provision of the "Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels" imposed by the Philippine Overseas Employment Administration (POEA) and does not preclude him from seeking medical attention to a physician of his own choice, more so, if the purpose of which is to provide an independent medical assessment of his true condition. According to him, the law does not exclusively vest to the company-designated physician the sole authority to assess and certify the extent of the injury/sickness for purposes of payment of compensation and disability benefits. Lastly, petitioner asserts that he is entitled to the award of damages because the act of respondents in failing to pay what is due him shows utter disregard for public policy to protect labor, which is a clear indication of bad faith and attorney's fees as respondents' act has compelled him to incur expenses to protect his interest.

Respondents, on the other hand, in their Comment dated September 3, 2015, contend that the 240-day rule enunciated in *Vergara v. Hammonia Maritime Services, Inc. and Atlantic Marine Ltd.*,<sup>[6]</sup> and subsequent rulings of this Court, should govern, considering that the complaint of petitioner was filed on December 28, 2011. In the said decision of this Court, it was ruled that a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. They also aver that the failure of petitioner to follow the procedure of submitting conflicting assessments to the opinion of an independent third doctor bars his claim for disability benefits. Finally, they insist that

the claim for damages and attorney's fees is bereft of any factual and legal basis as there can be no malice, bad faith or ill-motive that can be imputed against petitioner.

As a general rule, only questions of law raised via a petition for review under Rule 45 of the Rules of Court<sup>[7]</sup> are reviewable by this Court.<sup>[8]</sup> Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.<sup>[9]</sup> However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,], the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,], as well as in the petitioner's main and reply briefs[,], are not disputed by the respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.<sup>[10]</sup>

Whether or not petitioner's illness is compensable as total and permanent disability is essentially a factual issue, however, the present case falls under one of the exceptions because the findings of the CA differ with that of the NLRC. Thus, this Court shall now proceed to resolve the issue raised in the petition for review.

The petition is meritorious.

In *Jebsen Maritime, Inc. v. Ravena*,<sup>[11]</sup> the Court summarized the applicable provisions that govern a seafarer's disability claim, thus:

The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract and the medical findings.<sup>[12]</sup>

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.

By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.<sup>[13]</sup>

Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.

Pertinent to the resolution of this petition's factual issues of compensability (of *ampullary* cancer) and compliance (with the POEA-SEC prescribed procedures for disability determination) is Section 20-B of the 2000 POEA-SEC<sup>[14]</sup> (the governing POEA-SEC at the time the petitioners employed Ravena in 2006). It reads in part:

#### SECTION 20. COMPENSATION AND BENEFITS

x x x x

##### B. 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:

x x x x

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or repatriated

**However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to