

SECOND DIVISION

[G.R. No. 223731, August 30, 2017]

ROBELITO MALINIS TALAROC, PETITIONER, VS. ARPAPHIL SHIPPING CORPORATION, EPIDAURUS S.A., AND/OR NATIVIDAD PAPPAS, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated October 9, 2015 and the Resolution^[3] dated March 21, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138842, which reversed and set aside the Decision^[4] dated September 17, 2014 and the Resolution^[5] dated November 28, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW-M-07-000582-14, and instead, reinstated the Decision^[6] dated May 30, 2014 of the Labor Arbiter (LA) in NLRC NCR OFW Case (M)-08-12057-13 dismissing the complaint for total and permanent disability benefits but ordered respondents to solidarity pay petitioner Robelito Malinis Talaroc (petitioner) his unpaid sickness allowance, with modification deleting the award of attorney's fees.

The Facts

Petitioner was employed by respondent Arpaphil Shipping Corporation (ASC) for its foreign principal Epidaurus S.A. as Third Officer on board the vessel MV *Exelixis* under a six (6)-month contract^[7] that was signed on February 18, 2013, with a basic monthly salary of US\$1,113.00 exclusive of overtime and other benefits.^[8] After undergoing the required pre-employment medical examination (PEME) where he was declared fit for sea duty^[9] by the company designated physician, petitioner boarded the vessel on March 8, 2013.^[10]

On March 16, 2013, the Ship Master informed respondent Epidaurus S.A. that petitioner could not perform his duties due to fever and back pain.^[11] Petitioner claimed that while he was collecting the mooring rope, he felt a sudden click in his lower back accompanied with pain.^[12] He was examined by a port doctor in Algeria and injected with pain reliever for his back. He was also treated for sore throat that caused his fever and given medication for his hypertension.^[13] Thereafter, petitioner also complained of stomach pain and dizziness, for which the Ship Master recommended that he be confined in a hospital for further treatment and opined that he was not fit to work.^[14] In a Medical Report^[15] dated March 24, 2013, petitioner was found to be suffering from *lumbago* with stomach pains, in addition to his hypertension, and recommended that he be repatriated for further medical treatment.

Upon arrival in Manila, or on March 26, 2013, petitioner was referred to the company-designated physician of ASC, Dr. Esther G. Go (Dr. Go), and was diagnosed to have hypertension, "[t]o [c]onsider Gastrointestinal Bleeding [p]robably [secondary to Gastric Ulcers," and lumbar muscle strain.^[16] After undergoing a series of laboratory tests and examinations, petitioner was found to be suffering from gastric ulcer, duodenitis, and hypertension.^[17] His lumbosacral x-ray showed an "L3-L4 and L4-L5 Generalized Disc Bulge," while his MRI of the lumbar spine showed an "L5-S1, Left Paracentral Disc Protrusion."^[18] He was advised by Dr. Go to undergo rehabilitation and continue his medications.^[19]

On April 29, 2013, petitioner was again admitted to the hospital due to "left facial asymmetry, loss of balance and left leg weakness" and referred to a neurologist who found him to have "Right Brainstem Infarct."^[20] He underwent physical therapy on an in-patient basis until his discharge on May 2, 2013, after which he was directed to continue his prescribed medications, as well as rehabilitation as an out-patient.^[21]

Thereafter, in a confidential medical report^[22] dated May 14, 2013 (May 14, 2013 medical report), the company designated physician assessed petitioner's condition as follows:

This is with regards to your query regarding the case of 3rd Officer Robelito M. Talaroc who was initially seen here at Metropolitan Medical Center on March 27, 2013 and was diagnosed to have Gastric Ulcer; Duodenitis; Hypertension; L-3 - L-4 and L4 - L-5 Generalized Disc Bulge; L5 - S1, Left Paracentral Disc Protrusion.

Gastric Ulcer and Duodenitis are part of the spectrum of acid-related diseases listed under Section 32-a Item # 22 of the amended POEA Contract.

The etiology/cause of Hypertension is not work-related. It is multifactorial in origin which includes genetic predisposition, poor lifestyle, high salt intake, smoking, Diabetes Mellitus, age and increased sympathetic activity. This is already pre-existing.

Disc bulge and disc protrusion can be precipitated/aggravated by heavy work or lifting/pushing or pulling heavy objects. This is degenerative in nature.

Patient also had acute onset of headache and diplopia with left leg weakness on the last week of April 2013.

He was then noted with acute brainstem infarction on CT Scan. This occurred while he is currently undergoing treatment here in the Philippines for his Gastric Ulcer, Hypertension and back pain.

Risk factors for Lacunar Infarct are age, smoking, alcohol intake, Hypertension and Hypercholesterolemia. All of which are not work-related. This is not work-related.

The specialists opine that patient's prognosis for returning to sea duties is guarded and fitness to work is unlikely due to risk of another cerebrovascular event.

His estimated length of further treatment is approximately 3 more months before he reached his maximum medical improvement.

He will also undergo repeat Gastrosocopy once neurologically and cardiac stable for treatment monitoring of his gastric ulcer.

x x x x

If patient is entitled to a disability, his suggested disability grading is Grade 10 - slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient.^[23] (Emphases supplied)

Accordingly, petitioner was directed to appear in a series of follow-up check-ups by Dr. Go on May 16 and 20, 2013, June 3 and 20, 2013, July 11, 2013, and August 1 and 22, 2013.^[24] In all of the follow-up sessions, petitioner persistently complained of left leg weakness, low back pain and occasional dizziness, to which Dr. Go merely advised him to continue his medications and rehabilitation program. In a medical report^[25] dated August 22, 2013 (August 22, 2013 medical report), petitioner was cleared by the specialist, Dr. Chen Pen Lim, of his gastric ulcer and gastro-intestinal disorder.

Unconvinced of the true state of his condition, petitioner consulted an independent physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who, in a Medical Report^[26] dated September 20, 2013, found him unfit to return to work as a seafarer after evaluating his previous MRI and upon physical examination, pointing out that in view of his persistent back pain, he has lost his pre-injury capacity that rendered him permanently disabled.^[27]

In the interim, or on August 28, 2013, petitioner filed a complaint^[28] for underpayment of sick leave pay, non-payment of salaries/wages, reimbursement of transportation expenses, payment of sickness allowance, moral and exemplary damages, and attorney's fees against ASC, its Owner/Manager/President Natividad A. Pappas, and Epidaurus S.A. (respondents), before the NLRC, docketed as NLRC NCR OFW Case (M)-08-12057-13. The complaint was subsequently amended^[29] on October 2, 2013 to include a claim for total and permanent disability benefits in view of Dr. Magtira's independent medical report finding petitioner unfit to resume his usual work as a seafarer.^[30]

In support of his claim, petitioner averred that from the time he was repatriated for his back injury, he was no longer capable of resuming work as a seafarer that lasted for more than 240 days despite medical treatment and therapy. By reason thereof, he had lost his capacity to obtain further sea employment and an opportunity to

earn an income, thus entitling him to payment of total disability compensation in the full amount of US\$90,000.00 pursuant to the P.N.O "TCC" Collective Agreement for Crews on Flag of Convenience Ships^[31] (CBA) that was enforced during his last employment contract. Petitioner also sought for the payment of moral and exemplary damages in view of respondents' unjustified refusal to settle the matter and their evident bad faith in dealing with him, as well as attorney's fees pursuant to Article 2208, paragraphs (2) and (8) of the Civil Code.^[32]

For their part,^[33] respondents maintained that petitioner was not entitled to permanent and total disability benefits under the CBA since the latter's illness did not arise from an accident.^[34] They contended that petitioner's diagnosed illnesses, namely, Gastric Ulcer and Duodenitis, were already resolved as shown in the August 22, 2013 medical report, while his other illnesses, namely, hypertension, generalized disc bulge and left paracentral disc protrusion, and lacunar infarct, were all declared by Dr. Go to be not work-related, hence, not compensable.^[35] Finally, they argued that petitioner's action was premature as the 240-day extended medical treatment has not yet expired at the time he filed his complaint and that he failed to comply with the provisions of the Philippine Overseas Employment Agency (POEA) Standard Employment Contract (POEA-SEC) in case of conflict in medical findings by the parties' respective doctors.^[36] They further denied petitioner's other monetary claims asserting that his sickness allowance had already been paid, while his claim for reimbursement of transportation expenses was unsupported by receipts. Petitioner was also not entitled to moral and exemplary damages having been treated fairly and in good faith, as well as to attorney's fees for lack of basis.^[37]

The LA Ruling

In a Decision^[38] dated May 30, 2014, the LA dismissed the complaint for lack of cause of action, holding that the claim for disability benefits was filed before the lapse of the allowable 240-day extended medical treatment period. The LA pointed out that Dr. Go's assessment on May 14, 2013 giving petitioner a Grade 10 disability rating was only interim and that the latter's resort to an independent physician was premature as the former has yet to issue his final assessment within the agreed extended 240-day extended treatment period.^[39] Nevertheless, the LA found merit in petitioner's claim for sickness allowance, noting that he was paid for a period of 93 days only and not 120 days as provided under the POEA-SEC.^[40] The other claims for unpaid salaries, medical expenses and damages were denied for lack of basis, while an award of ten (10%) percent attorney's fees was found reasonable under the circumstances as petitioner was compelled to litigate to protect his interest in accordance with Article 2208 (7) of the Civil Code, as well as Article 111 of the Labor Code and Section 8, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code.^[41]

Aggrieved, petitioner filed an appeal^[42] to the NLRC.

The NLRC Ruling

In a Decision^[43] dated September 17, 2014, the NLRC set aside the LA decision,^[44] ruling that the 240-day extended medical treatment was not an automatic

application in case of disability claim. It pointed out that there must be a need for further medical treatment before the 120-day period may be extended which Dr. Go failed to show. It observed that the May 14, 2013 medical report, which showed that the estimated length of petitioner's treatment was approximately three (3) months, was self-serving and devoid of any probative value as there was no mention of the particular treatment or rehabilitation needed. It added that while there was no question as to his medications, there was, however, no proof showing that petitioner, in fact, underwent rehabilitation, or if there was, that it went beyond the 120-day period. On the contrary, it held that the company's specialists' opinion that the "*prognosis for returning to sea duties is guarded and fitness to work is unlikely due to risk of another cerebrovascular event*" was an indication that there was no need to extend the 120-day period since the unlikelihood of working was due to the fact that (a) petitioner was permanently disabled, and (b) that an extended treatment was unnecessary considering that it would no longer restore petitioner to his pre-injury condition. It ruled that Dr. Go's assessment of a Grade 10 disability was not interim or conditional absent any similar import suggesting the same, and that there was no need to await a final assessment given that it referred to petitioner's slight brain functional disturbance, and not his lumbar spondylosis, that incapacitated him to resume work for more than 120-days.^[45]

Further, the NLRC found that petitioner's incapacity is work-related, stating that it is of no moment that his work as a Third Officer or even his working conditions on board respondents' vessel was not the sole or direct cause of his lumbar spondylosis, as it suffices that his work, at the very least, aggravated his illness.^[46]

Accordingly, the NLRC ordered respondents to jointly and severally pay petitioner total and permanent disability benefits in the amount of US\$60,000.00 pursuant to the provisions of the POEA-SEC and not the CBA, as the disability did not arise from an accident, as well as ten percent (10%) attorney's fees.^[47]

Respondents filed a motion for reconsideration,^[48] while petitioner moved to reconsider^[49] the amount of his disability benefits asserting that he was entitled to US\$90,000.00 pursuant to the overriding provisions of the existing CBA.^[50]

In a Resolution^[51] dated November 28, 2014, the NLRC denied both motions prompting respondents to file a petition for *certiorari*^[52] before the CA, docketed as CA-G.R. SP No. 138842.

The CA Ruling

In a Decision^[53] dated October 9, 2015, the CA gave due course to the petition finding the NLRC to have gravely abused its discretion,^[54] and reinstated the LA's Decision dated May 30, 2014 with modification deleting the award of attorney's fees.^[55] It ruled that since petitioner was advised to continue with his rehabilitation program in the medical report^[56] dated August 1, 2013 and to undergo laboratory examinations and gastroscopy on his next check-up scheduled on August 22, 2013, the company-designated physician, Dr. Go, had until November 22, 2013 (240th day) to determine with finality the former's fitness to work or disability. There being no final assessment yet, the complaint for total and permanent disability benefits