

## SECOND DIVISION

[ G.R. No. 220002, August 02, 2017 ]

**EUGENIO M. GOMEZ, PETITIONER, VS. CROSSWORLD MARINE SERVICES, INC., GOLDEN SHIPPING COMPANY S.A., AND ELEAZAR DIAZ, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> dated February 5, 2015 and its Resolution<sup>[3]</sup> dated August 7, 2015, declaring petitioner Eugenio M. Gomez to have suffered permanent partial disability with an impediment of Grade 8 and ordering respondents Crossworld Marine Services, Inc., Golden Union Shipping Company, S.A. and Eleazar Diaz jointly and severally liable to pay petitioner Gomez his disability compensation in the amount of US\$30,527.26 or its peso equivalent at the exchange rate prevailing at the time of actual payment as well as attorney's fees equivalent to 10% of the said amount due.

The facts are as follows:

On October 12, 2011, Crossworld Marine Services, Inc., in behalf of its principal, Golden Union Shipping Company, hired petitioner Eugenio M. Gomez as an Ordinary Seaman in the vessel M/V Elena VE for a period of 11 months, with a basic monthly compensation of US\$583.00. At the time of petitioner's employment, the employees of M/V Elena VE were covered by a special agreement known as *ITF UNIFORM "TCC" Collective Agreement* between the ship owner and the union.<sup>[4]</sup>

Before being hired by respondents, petitioner underwent the required pre-employment medical examination and he was declared fit to work. Petitioner, 42 years old then, joined respondents' vessel on October 30, 2011 in Belgium.<sup>[5]</sup>

On February 29, 2012, at about 8:00 a.m., the Chief Officer of the vessel told petitioner to remove the ice from the lower and upper decks of the ship. While performing this task, petitioner accidentally slipped and hit his lower back on the steel deck. Petitioner was immediately in pain, but thought it was just temporary. He rested a moment and then continued to work despite the pain. He reported the incident to his superior when he asked for pain relievers.<sup>[6]</sup>

After 15 days or on March 15, 2012, petitioner could no longer bear the pain on his back and went to the vessel's master and requested for medical examination. He was told to go to the hospital the next day.<sup>[7]</sup>

Petitioner was examined and treated in Belgium; x-ray was done, intravenous fluid was administered, and medicine was injected twice on his back. He was diagnosed

with Lumbago. The doctor-in-charge recommended petitioner's repatriation for further treatment.<sup>[8]</sup> Petitioner was repatriated to the Philippines on March 18, 2012.<sup>[9]</sup>

Petitioner arrived in the Philippines on March 19, 2012. The next day, petitioner reported to respondents and requested for further medical examination and treatment.<sup>[10]</sup> Petitioner was referred to the company's accredited doctors at the International Health Aide Diagnostic Services, Inc. (IHADS) for medical evaluation. He underwent six sessions of physical therapy, but the pain in his lumbar area still persisted. On May 11, 2012, IHADS referred petitioner for magnetic resonance imaging (MRI) of his lumbosacral spine at the University Physicians Medical Center. The MRI yielded this result:

IMPRESSION:

Multilevel discogenic and osteophytic central canal and bilateral foraminal stenosis as described, L4-L5 and L5-S1.

Disc dessication, L4-L5 and L5-S1<sup>[11]</sup>

On June 6, 2012, petitioner was hospitalized at the Medical Center Manila to undergo two surgical procedures: lumbar laminectomy<sup>[12]</sup> and foraminotomy<sup>[13]</sup> to address petitioner's herniated disc, as advised by the company doctor. The Record of Operation<sup>[14]</sup> dated June 7, 2012 showed the preoperative diagnosis: slipped disc, L4-L5, L5-S1. Petitioner was discharged from the hospital on June 13, 2012 with home medication.

Petitioner went to IHADS for a follow-up checkup on June 20, 2012; July 16, 2012 and August 17, 2012.<sup>[15]</sup>

On July 24, 2012, the company-designated doctor, Dr. Ma. Dolores Tay, submitted a medical report<sup>[16]</sup> to Captain Eleazar Diaz, president of respondent Crossworld Marine Services, Inc., stating that petitioner can walk without difficulty, but petitioner complained about a mild pain on the left buttock area on prolonged sitting or standing; mild activities are allowed; and the interim disability assessment is Grade 8 based on the POEA Contract Schedule of Disability.

On August 18, 2012, Dr. Tay submitted another report<sup>[17]</sup> to the President of respondent Crossworld Marine Services, Inc., stating that petitioner still complained of mild low back discomfort; he was advised to maintain ideal weight; and the attending spine surgeon recommended rehabilitation for flexibility and strengthening.

Petitioner was referred to Dr. Emily P. Noche-Cabungcal for physical therapy. Petitioner completed six sessions of physical therapy, but he still complained of low back pain. On September 8, 2012, Dr. Noche-Cabungcal recommended the continuation of physical therapy.<sup>[18]</sup> Petitioner, however, stated that respondents already refused to shoulder further medical expenses.<sup>[19]</sup>

On September 11, 2012, Dr. Tay submitted another report on the condition of

petitioner to the President of respondent Crossworld Marine Services, Inc., stating thus:

PRESENT EXAMINATION:

He still complains of mild low back discomfort although no neurologic deficits noted. **Functional capacity testing was done according to his job description which he did not pass due to back pain on certain motions.** He should continue flexibility and strength exercises through his physiatrist. Follow up is scheduled on October 11, 2012.

DIAGNOSIS: Status post laminectomy L4L5-L5S1 and foraminotomy L4L5-L4S1. Ongoing physiotherapy.

DISPOSITION: Prognosis is fair to good. His symptoms at present are subjective. If he will pass the functional capacity testing after adequate flexibility is attained, he can resume work at sea.

This is seen in 2 to 3 more months. **Interim disability assessment is unchanged at Grade 8 based on the POEA Contract Schedule of Impediments.**<sup>[20]</sup> (Emphasis supplied.)

Meantime, petitioner went to see another physician, Dr. Renato P. Runas, an orthopedic surgeon, for a second opinion regarding his low back pain. In a Medical Evaluation Report dated September 7, 2012,<sup>[21]</sup> Dr. Runas made this finding:

x x x x

At present, Seaman Gomez is still incapacitated due to pain on the lower back with numbness of the left lower extremity. Lower back pain is triggered by exertion. He cannot tolerate prolonged walking and standing because of pain. Forward and backward trunk motion is limited because of pain. He has difficulty standing from a sitting position. x x x

Seaman Gomez is still saddled with persistent and chronic moderate to severe low back pain. The residual pain is secondary to the disc disease and osteoarthritis. This chronic residual low back pain proved to be refractory to medications and physiotherapy management. He is unable to carry and lift heavy objects due to stiffness and pain. It is also difficult for him to bend, pick up and carry objects from the floor because of the limitation of trunk motion. **The surgery has lessened the intensity of pain but he did not regain his physical capacity to work. As an Ordinary Seaman, he does strenuous and heavy jobs which are no longer possible after the surgery. He needs complete activity modification to avoid further damage to the spine. He is unfit for sea duty in whatever capacity with a permanent disability since he can no longer perform his work which he is previously engaged in.** (Emphasis supplied)

Petitioner asked respondents for payment of his disability benefits, but respondents refused. Efforts toward an amicable settlement was unsuccessful. Hence, on September 13, 2012, petitioner filed a complaint<sup>[22]</sup> before the Labor Arbiter,

praying that his disability be declared as work-related, total and permanent, and that respondents be declared solidarity liable to pay him permanent total disability benefit, moral and exemplary damages and attorney's fees.

In their Position Paper,<sup>[23]</sup> respondents stated that in view of the medical report of their accredited doctor dated September 11, 2012 stating that petitioner can eventually resume his sea duties, they declined petitioner's claim for permanent total disability benefit.

### ***The Labor Arbiter's Ruling***

In a Decision<sup>[24]</sup> dated November 22, 2013, the Labor Arbiter held that petitioner was permanently and totally disabled and that he could no longer resume sea duty. The Labor Arbiter cited the medical report dated September 11, 2012 of the company-designated physician, which stated that petitioner did not pass the functional capacity test done according to petitioner's job description and he should continue flexibility and strength exercises through his physiatrist. The Labor Arbiter found as unmeritorious respondent's contention that petitioner's resumption of work at sea is expected, because petitioner did not pass the functional capacity test and was required to continue physical therapy, and he was still suffering from disability and has not returned to his previous job for more than 120 days. The Labor Arbiter cited *Crystal Shipping, Inc. v. Natividad*,<sup>[25]</sup> which held that permanent disability is the 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.

The Labor Arbiter stated that while the company-designated physicians did not state in categorical terms that petitioner was permanently disabled, they did not also state that he was already fit to work with disability Grade 8 and petitioner has not returned to his previous job for more than 120 days. The Labor Arbiter held that the findings of the company-designated physicians is not binding on the Labor Arbiter or the courts for the said reports would have to be evaluated on their inherent merit.

The Labor Arbiter ruled that petitioner's employment was covered by the ITF Uniform "TCC" Collective Bargaining Agreement (CBA), and petitioner is entitled to disability compensation under Section 21 (a) and (b) thereof in the amount of US\$156,816.00. The dispositive portion of the Decision reads:

WHEREFORE, a Decision is hereby rendered ordering Respondents Crossworld Marine Services, Inc. and Golden Union Shipping Company, S.A. to jointly and severally pay complainant Eugenio M. Gomez permanent disability benefit Grade 1, in the amount of US\$156,816 or its peso equivalent at the exchange rate prevailing at the time of actual payment plus 10% thereof as and by way of attorney's fees.<sup>[26]</sup>

Respondents appealed the Decision of the Labor Arbiter to the National Labor Relations Commission (NLRC).

### ***The NLRC's Ruling***

In a Decision<sup>[27]</sup> dated April 11, 2013, the NLRC affirmed the Decision of the Labor Arbiter. The NLRC stated that given the medical condition of petitioner as elaborated

by petitioner's specialist of choice and with due regard to the observations of the company-designated doctors that complainant's back pain persisted despite surgery and rehabilitation for a period of six months, it was inclined to believe that petitioner was suffering from permanent total disability as he is already permanently impaired in his earning capacity as an Ordinary Seaman or in any other work of a similar nature. Permanent total disability does not mean absolute helplessness. It 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, or any kind of work which a person of his mentality and attainment can do.<sup>[28]</sup>

The NLRC stated that as the vessel MV Elena VE was actually covered by the ITF TCC CBA when petitioner was engaged in the vessel in October 2011, it agreed with the Labor Arbiter's findings that petitioner is entitled to Disability 21 (a) and (b) of the said CBA in the amount of US\$156,816.00 as full disability benefit for ratings, including an ordinary seaman.

The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the appeal of the respondents is DENIED for lack of merit and the Labor Arbiter's Decision is hereby AFFIRMED in its entirety.<sup>[29]</sup>

The NLRC denied respondents' motion for reconsideration in a Resolution<sup>[30]</sup> dated June 20, 2013.

Respondents filed a petition for *certiorari* with the Court of Appeals, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the award in favor of petitioner of full disability benefit in the amount of US\$156,816.00 under the ITF Standard CBA.<sup>[31]</sup>

### ***The Court of Appeals' Ruling***

The Court of Appeals stated that the crux of the controversy is whether petitioner's injury is permanent total disability, in order to ascertain the rate of disability compensation that should be awarded to him.

The Court of Appeals found that the evidence clearly established that petitioner's injury rendered him permanently disabled, which hindered him from performing the work he was trained for or accustomed to do. Despite immediate and extensive medical treatment which lasted for six months or 180 days, the company-designated physician's assessment of petitioner's injury did not show remarkable progress. The surgical procedures (laminectomy and foraminotomy) performed to address petitioner's herniated discs did not entirely free him from low back pain. Although the company-designated physician, Dr. Tay, made a prognosis of "fair to good" on September 11, 2012, petitioner's disability with a Grade 8 impediment remained unchanged. Dr. Tay also noted that petitioner did not pass the functional capacity test that was tailored to petitioner's job description and recommended further therapy session for flexibility enhancement, and the therapy would take another two to three months.<sup>[32]</sup>

The Court of Appeals averred that although the provisions of the POEA Standard