

## FIRST DIVISION

[ G.R. No. 211111, September 25, 2017 ]

**C.F. SHARP CREW MANAGEMENT, INC., ITS PRESIDENT, AND  
GULF ENERGY MARITIME, PETITIONERS, VS. NOEL N. ORBETA,  
RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> are the October 18, 2013 Decision<sup>[2]</sup> and January 28, 2014 Resolution<sup>[3]</sup> of the Court of Appeals (CA) denying the Petition for *Certiorari* in CA-G.R. SP No. 125046 and affirming *in toto* the December 29, 2011 Decision<sup>[4]</sup> and April 30, 2012 Resolution<sup>[5]</sup> of the National Labor Relations Commission (NLRC) in NLRC LAC (OFW-M) No. 05-000371-11.

#### ***Factual Antecedents***

On June 11, 2009, respondent Noel N. Orbeta was hired by petitioner C.F. Sharp Crew Management, Inc. (CF Sharp), on behalf of its foreign principal and co-petitioner herein, Gulf Energy Maritime (GEM), as Able Seaman on board the vessel "M/T Gulf Coral". He boarded on September 9, 2009 and thereupon commenced his work.

It appears that on January 3, 2010, while on duty, respondent, as he was closing the vessel's air valve, slipped and fell on his back, and landed on the vessel's metal floor.<sup>[6]</sup>

On February 8, 2010, while the vessel was docked in the United Arab Emirates, respondent was referred for medical examination after complaining of pain in his lower right abdomen, difficulty in passing urine, and slight irritation in the urinal area. After examination by a physician, he was diagnosed with acute lumbago and recommended for immediate repatriation.<sup>[7]</sup>

On February 10, 2010, respondent was repatriated and, upon arrival, he immediately reported for post-employment examination and treatment to the company-designated physician, to whom he disclosed the January 3, 2010 accident. He was placed under the care of an orthopedic surgeon, who found him to be suffering from "compression fracture, L1, minimal."<sup>[8]</sup> As a result, respondent underwent physical therapy to rehabilitate his back, and was advised to wear a lumbar corset and undergo magnetic resonance imaging (MRI) of the lumbosacral spine. For medication, he was given neuron enhancers and pain relievers.<sup>[9]</sup>

On June 16, 2010, after the MRI results came out, respondent was temporarily diagnosed with "lumbosacral muscular spasm with mild spondylosis L3-L4;"<sup>[10]</sup> the

company-designated physician also concluded that there was no compression fracture, contrary to what was initially suspected. Respondent was thus given a Grade 10 partial disability rating pertaining to moderate rigidity of the truncal area. [11] He was scheduled to undergo a bone scan on July 16, 2010.

On July 16, 2010, respondent failed to appear before the company physician for the scheduled bone scan; [12] instead, it appears that he consulted with an independent orthopedic surgeon, Dr. Nicanor Escutin (Dr. Escutin), who prepared and signed a "Disability Report" [13] dated September 8, 2010 stating as follows:

FINAL DIAGNOSIS

- > COMPRESSION FRACTURE, L1
- > LUMBAR SPONDYLOSIS

DISABILITY RATING:

Based on the physical examination and supported by laboratory examination, he had his injury on his LOW BACK while working. He fell on the deck when their ship swayed. The fall was strong enough which resulted in some injury on his lumbar spine. He had several months of physical therapy but his back pain persisted, so he had MRI studies. His MRI showed that there is a [sic] some defect on his L3 vertebra. He was advised to have Bone scanning test to determine what is causing the abnormality at L3. The spondylosis at L3/L4 showed that there is some structural defect at L3 which is maybe due to the fall he sustained last Jan '10. He should undergo Bone Scan and EMG-NCV to determine the exact problem on his lumbar spine. If nothing is done, his condition might worsen which can incapacitate him. He will [sic] is not capable of returning to his former job as a seaman since he has still on and off back pain.

He is given a PERMANENT DISABILITY. He is UNFIT FOR SEADUTY in whatever capacity as a SEAMAN. [14]

Notably, Dr. Escutin's findings included a recommendation for respondent to undergo Bone Scan and EMG-NCV [15] to determine the exact problem on his lumbar spine, which is consistent with the recommendations of the company-designated physician.

***Ruling of the Labor Arbiter***

Instead of following the respective medical opinions of his and the company-designated physician, as well as subjecting himself to the required bone scan and other tests to fully determine and treat his condition, respondent filed on July 20, 2010 a complaint for payment of permanent and total disability benefits, medical expenses, damages, and attorney's fees against petitioners before the NLRC NCR, Quezon City, docketed as NLRC-NCR Case No. (M) 07-09911-10.

In his Position Paper [16] and other pleadings, [17] respondent claimed that his work-related spinal injury entitles him to permanent and total disability and other benefits afforded him under his Philippine Overseas Employment Administration (POEA)

Standard Employment Contract, as well as damages for the anxiety and stress he suffered as a result of petitioners' refusal to pay his claims. Thus, he prayed that petitioners be ordered to pay him a) permanent total disability benefits in the amount of US\$89,000.00 or its peso equivalent; b) sickness benefit allowance of US\$3,070.00; c) moral and exemplary damages at P500,000.00 each; and d) 10% attorney's fees.

In their joint Position Paper<sup>[18]</sup> and other pleadings,<sup>[19]</sup> petitioners sought dismissal of the complaint, arguing that respondent is not entitled to his claim of permanent total disability benefits, in view of the company designated physician's final and binding Grade 10 assessment; that respondent abandoned his treatment, which was still ongoing when he filed the labor case; that respondent is entitled only to US\$17,954.00 as compensation for his Grade 10 disability rating; yet by abandoning his treatment and violating the POEA contract, respondent should be held responsible and is not entitled to disability and other benefits, damages, and all other claims, and for this reason, respondent's case should be dismissed; that respondent's resort to an independent physician who arrived at a contrary finding entitled petitioners to secure the opinion of a third doctor, pursuant to Section 20-B(3) of the POEA contract,<sup>[20]</sup> which could no longer be done in view of the filing of the labor case, and for this reason, the opinion of the company-designated physician should instead prevail; that respondent's back pain does not deserve a Grade 1 rating under Section 32 of the POEA contract,<sup>[21]</sup> as it is not severe and did not render him completely immobile or paralyzed; and, that respondent's other claims are thereby rendered unfounded and baseless. Petitioners prayed that they be held liable only for the total amount of US\$17,954.00 which is equivalent to the Grade 10 disability rating given by the company-designated physician.

On February 23, 2011, a Decision<sup>[22]</sup> was rendered by Labor Arbiter Catalino R. Laderas granting disability benefits and attorney's fees in favor of respondent. The Decision decrees as follows:

It appears from the foregoing facts, circumstances and arguments advanced by the opposing parties, the only issue is that of disability rating.

After [a] careful evaluation of the positions of complainant and [respondents,] this Office finds the disability gradings issued by the company designated doctor and the independent Physician to be inappropriate.

It was established that the complainant suffered injury of [the] lumbar spine due to [an] accident while on board [the] MV Gulf Coral on January 3, 2010. He was subjected to [a] series of Medical examination and treatment for almost five (5) months by the company doctor and later on by an independent physician for having suffered intermiheat [sic] pains at the back.

On June 16, 2010 the [sic] Dra. Susannah Ong-Salvador, [respondents'] Medical Coordinator prematurely issued a disability assessment of Grade 10 to the complainant x x x though the complainant has yet to undergo Bone Scan xx x. This to our mind is [an] inappropriate assessment of the

disability grade of [the] complainant because he has not fully recovered. While it may be true that the assessment of the company designated physician has great probative value, it could not be said as [binding] and conclusive as the assessment issued to complainant was done prior to the termination of Medical examinations.

Independent Doctor assessment of complainant's disability grading is likewise inappropriate as it was merely based on presumption. It was noted that from the disability rating issued by Dr. Nicanor F. Escutin x x x is not yet certain to warrant issuance of disability rating. x x x

x x x x

Considering therefore the degree of the injury suffered and the duration of complainant's Medical treatment this Office finds the disability rating stated in paragraph 4, Chest-Trunk-Spine, Section 32 of Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessel applicable which states:

'CHEST-TRUNK-SPINE

x x x x

4. Fracture of the dorsal or lumbar spines resulting to [severe] or total rigidity of the trunk or total loss of lifting power of heavy objects -----  
GR. 6

x x x x

The [claim] for payment of Medical expenses and damages has no legal and factual bases hence the same must fail.

The claim for payment of attorney's fees is warranted in the light of the legal services rendered by the counsel for the complainant in protecting the rights and interest of his client by way of recovery of the disability benefits of the latter.

WHEREFORE, premised on the foregoing considerations, judgment is hereby rendered ordering the respondents

1. To pay complainant his disability benefits equivalent to Disability Grade 6 in the amount of US\$44,550 or its peso equivalent at the time of payment.
2. To pay attorney's fee of ten (10%) percent of complainant's monetary award.

Other claims dismissed.

SO ORDERED. <sup>[23]</sup>

## ***Ruling of the National Labor Relations Commission***

Petitioners took the matter before the NLRC, via appeal docketed as NLRC LAC (OFW-M) No. 05-000371-11.

On December 29, 2011, the NLRC issued its Decision, declaring as follows:

The appeal has no merit.

It is an undisputed fact that complainant-appellee's work-related injury has not been resolved despite the extensive medical management undertaken by the company-designated physician for a period of more than 120 days or from February 11 to June 16, 2010. By reason thereof, both the company-designated physician and Dr. Escutin found it imperative for the complainant-appellee to undergo a Bone Scan for the purpose of determining the cause of the abnormality in his lumbar spine. As it remains unresolved, complainant-appellee continues to suffer intermittent pain on his back. Undeniably, this unstable condition of the complainant-appellee gave rise to the varying assessments on the extent of his disability by the two (2) doctors based on their own medical perspectives. It is worthy to underscore that both doctors are Orthopedic Surgeons, whose competence and expertise to address the medical condition of the complainant-appellee are definitely beyond question.

We analyzed the disability ratings of the company-designated physician and Dr. Escutin for the purpose of resolving the issue pertaining to the extent of disability compensation and We are persuaded that the former had thoroughly examined complainant-appellee. Dr. Escutin however only saw him once and the basis of his disability report was not revealed, thus making his finding inconclusive. However, We cannot ignore the fact that the company doctor merely gave a provisional rating. Additionally, complainant-appellee was advised to undergo bone scan. We are convinced that these facts are articulate indicators that complainant-appellee's illness has not been resolved even after the lapse of 120 days.

It bears to stress that it is not the medical significance of the illness that solely determines whether a seafarer is permanently or totally disabled. The nature of his job vis-a-vis his illness should also be considered. Complainant-Appellee worked as an Able Seaman. As such he is expected to be physically fit because agility and [strength] are requirements of his job. Complainant-Appellee has been found to be suffering from spondylosis, which has been described as the degeneration of the spine caused by wear and tear on the joints. According to medical literature, deterioration involves the cartilages and bones in either the cervical spine (joints of the neck) sometimes referred to as cervical spondylosis or the lumbar spine sometimes referred to as lumbar degenerative disc disease x x x. With this kind of ailment, it is plain to see that complainant-appellee's seafaring career as an able seaman has come to an untimely end. It is for this reason that We resolve to grant him total and permanent disability benefit.