

SECOND DIVISION

[G.R. No. 206758, February 17, 2016]

MARICEL S. NONAY, PETITIONER, VS. BAHIA SHIPPING SERVICES, INC., FRED OLSEN LINES AND CYNTHIA MENDOZA, RESPONDENTS.

DECISION

LEONEN, J.:

In some cases, illnesses that are contracted by seafarers and are not listed as occupational diseases under the 2000 Philippine Overseas Employment Administration-Standard Employment Contract may be disputably presumed to be work-related or work-aggravated. The relation of the disease contracted to the work done by the seafarer, or that the work aggravated the disease, must be sufficiently proven by substantial evidence. Otherwise, the claim for disability benefits cannot be granted.

Bahia Shipping Services, Inc., (Bahia Shipping), for and on behalf of Fred Olsen Cruise Lines, Ltd., hired Maricel S. Nonay (Nonay) in 2008.^[1]

From July 16, 2008 to May 15, 2009, Nonay worked on board the M/S Braemer as Casino Attendant/Senior Casino Attendant.^[2] Nonay was re-hired by Bahia Shipping as Casino Attendant on June 8, 2009^[3] for a period of nine (9) months.^[4] She re-boarded the M/S Braemer on August 1, 2009.^[5]

When she boarded the M/S Braemer, she was assigned to work "as an Assistant Accountant (Night Auditor) until January 20, 2010."^[6] On January 21, 2010, she was assigned to work as Senior Casino Attendant.^[7]

Around the middle of February 2010, Nonay "experienced profuse and consistent bleeding[,] extreme dizziness and . . . difficulty in breathing."^[8] She went to the ship's clinic and was given medication.^[9] The next day, Nonay experienced severe headache. She again went to the ship's clinic, and was prescribed a different medication, which worsened her headache. Thus, she stopped taking the medicine.^[10]

Nonay's bleeding intensified. She was later advised by the ship's physician to rest. However, her condition did not improve so she went to a clinic in Barbados. A transvaginal ultrasound conducted on Nonay revealed that she had two (2) ovarian cysts. She returned to the ship and was assigned to perform light duties.^[11]

On March 20, 2010, Nonay was medically repatriated. Bahia Shipping referred her to the company-designated physician at the Metropolitan Medical Center in Manila.^[12]

On March 22, 2010, Nonay "was placed under the care of an obstetrician-gynecologist[,]"^[13] also a company-designated physician. The obstetrician-gynecologist diagnosed Nonay with "Abnormal Uterine Bleeding Secondary to a[n] Adenomyosis with Adenomyoma."^[14] Nonay underwent endometrial dilatation and curettage as part of her treatment.^[15]

Nonay was not declared fit to work by the end of the 120-day period from March 20, 2010, the date of her repatriation,^[16] but she was declared "fit to resume sea duties"^[17] within the 240-day period.^[18]

On September 8, 2010, she filed a Complaint "for payment of disability benefit, medical expenses, moral and exemplary damages and attorney's fees."^[19] She sought to claim permanent disability benefits based on the collective bargaining agreement she signed.^[20]

The Labor Arbiter ruled in favor of Maricel S. Nonay.^[21] The dispositive portion of the Decision reads:

WHEREFORE, premises all considered, judgment is hereby rendered as follows:

Ordering respondents to pay complainant her permanent disability compensation in accordance with the CBA in the amount of US\$80,000.00; and 10% of the award by way of attorney's fees.

SO ORDERED.^[22] (Citation omitted)

Bahia Shipping appealed to the National Labor Relations Commission, which affirmed the Labor Arbiter's Decision.^[23] The National Labor Arbiter Labor Relations Commission ruled as follows:

WHEREFORE, premises considered, the appeal of the respondents-appellants is hereby DENIED and the Decision of Labor Arbiter Valentin Reyes dated January 18, 2011 is hereby AFFIRMED.

SO ORDERED.^[24] (Emphasis in the original, citation omitted)

Bahia Shipping moved for reconsideration, but the Motion was denied.^[25]

Bahia Shipping filed a Petition for Certiorari before the Court Appeals arguing that the National Labor Relations Commission committed grave abuse of discretion when it ruled that "[Nonay's] illness is work-related despite substantial evidence to the contrary[.]"^[26]

The Court of Appeals granted the Petition for Certiorari and held that the National Labor Relations Commission gravely abused its discretion in affirming the Labor

Arbiter's ruling.^[27] It found that Nonay failed to provide substantial evidence to prove her allegation that her illness is work-related.^[28] The Court of Appeals gave greater weight to the findings of the company-designated physician holding that the company-designated physician "had acquired detailed knowledge and was familiar with [Nonay's] medical condition."^[29]

The dispositive portion of the Court of Appeals Decision^[30] states:

WHEREFORE, the present petition is **GRANTED**. The Resolutions dated September 28, 2011 and November 29, 2011 of public respondent National Labor Relations Commission are **NULLIFIED and SET ASIDE**. The complaint of private respondent Maricel S. Nonay is **DISMISSED**.

For humanitarian considerations, petitioners are **ORDERED** to pay private respondent financial assistance in the amount of P50,000.00.

SO ORDERED.^[31] (Emphasis in the original)

Nonay moved for reconsideration, but the Motion was denied by the Court of Appeals in the Resolution^[32] dated April 12, 2013.

While the Petition for Certiorari was pending before the Court of Appeals, Bahia Shipping paid Nonay the amount of P3,780,040.00 pursuant to the final and executory Decision of the National Labor Relations Commission.^[33] Thus, the Court of Appeals also stated in its April 12, 2013 Resolution that:

The manifestation of petitioners in their comment that "they paid the amount of Php 3,780,040.00 to Private Respondent based on the judgment award of the Third Division of Public Respondent NLRC," with their prayer "that Private Respondent be ordered to return to Petitioners the judgment award less the Php 50,000.00 humanitarian award granted by this Honorable Court in her favor," is merely noted. The same pertains to execution and must be threshed out before the labor arbiter at the execution stage when the Court's judgment becomes final and executory.^[34] (Citation omitted)

On June 5, 2013, Nonay filed a "Petition for Certiorari"^[35] before this court, but the contents of her Petition indicated that it was a petition for review on certiorari under Rule 45 of the Rules of Court.^[36]

In the Resolution^[37] dated July 17, 2013, this court required the respondents to comment on the Petition within 10 days from notice.

Bahia Shipping filed a Motion for Extension of Time to File Comment^[38] on September 13, 2013. The Comment^[39] was filed on October 14, 2013.

Nonay filed her Reply^[40] on January 30, 2014, which was noted by this court in the Resolution^[41] dated March 12, 2014. In the same Resolution, this court required the parties to submit their memoranda within 30 days from notice.^[42]

Nonay argues that the National Labor Relations Commission did not gravely abuse its discretion when it found that her illness was work-related and work-aggravated since more than 120 days lapsed without any declaration from the company-designated physician that she was fit to work.^[43] Thus, her illness was compensable.^[44]

She also argues that she underwent the required pre-employment medical examination and was certified fit to work. The fit-to-work certification shows that when she boarded the vessel, she was in perfect health. However, she was repatriated for medical reasons. Thus, her illness developed in the course of her work onboard the M/S Braemer.^[45]

Nonay points out that the test in claims for disability benefits is "not the absolute certainty that the nature of employment. . . caused the illness of the worker."^[46] Instead, the test only requires "the probability that the nature of employment of the worker . . . caused or contributed in the enhancement, development[,] and deterioration of such illness."^[47] Further, "in case of doubt as to the compensability of an ailment, the doubt is always settled in favor of its compensability."^[48] It is not the gravity of the injury that is compensated but the loss of earning capacity.^[49]

She alleges that she can no longer obtain employment and has lost her capacity to earn income as a seafarer.^[50] Thus, she is entitled to disability compensation as provided under the Collective Bargaining Agreement.^[51] She alleges that under her Collective Bargaining Agreement, "all . . . illnesses of a medically repatriated seafarer ... are presumed work related."^[52]

Nonay cites the 2000 Philippine Overseas Employment Agency-Standard Employment Contract (POEA Standard Employment Contract), suppletory to the Collective Bargaining Agreement, which provides that "all other illnesses acquired by the seafarers onboard the vessel including those not listed as occupational disease are presumed work related and work aggravated."^[53]

She further argues that the company-designated physician is biased in favor of Bciah Shipping.^[54] On the other hand, her personal physician, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto) is "an independent general medical practitioner and he has no special relationship to petitioner other than doctor-patient relationship only."^[55]

She claims that the Petition filed before the Court of Appeals should have been considered moot and academic since the judgment award was fully settled.^[56]

On the other hand, Bahia Shipping argues that the Petition should be dismissed because petitioner raised questions of facts that are not allowed in petitions for review on certiorari.^[57]

Bahia Shipping also argues that Nonay is not entitled to total and permanent disability benefits because she "was declared fit to work within the 240-day period[.]"^[58] She filed the Complaint before the Labor Arbiter without complying with the mandated procedure that the medical assessment be referred to a third doctor in the event that the company-designated physician and the personal physician differ in their findings, as in this case.^[59]

In addition, Nonay's personal physician, Dr. Jacinto, did not show how prolonged walking and standing could result to adenomyoma.^[60] Nonay consulted Dr. Jacinto only once. Further, he is an orthopedic surgeon and not an obstetrician-gynecologist.^[61]

We resolve the following issues:

First, whether the satisfaction of the judgment award rendered the Petition for Certiorari before the Court of Appeals moot and academic;

Second, whether the Petition should be dismissed for allegedly raising questions of fact;

Third, whether the Court of Appeals erred in granting the Petition for Certiorari and setting aside the Decision of the National Labor Relations Commission;

Fourth, whether petitioner Maricel S. Nonay is entitled to full disability benefits under the Norwegian Collective Bargaining Agreement;

Fifth, whether the employee has the burden to prove to the court that the illness was acquired or aggravated during the period of employment before the disputable presumption that the illness is work-related or work-aggravated arises; and

Lastly, whether petitioner is permanently and totally disabled because the company-designated physician failed to certify that she is fit to work after the lapse of 120 days.

This court denies the Petition and affirms the Decision of the Court of Appeals.

I

Payment of the judgment award in labor cases does not always render a petition for certiorari filed before the Court of Appeals, or a petition for review on certiorari filed before this court, moot and academic. A similar issue was decided in *Eastern Shipping Lines, Inc., et al. v. Canja*.^[62] In *Eastern Shipping*, the Decision of the National Labor Relations Commission became final and executory and was satisfied during the pendency of the Petition for Review on Certiorari filed before the Court of Appeals.^[63] The Court of Appeals modified the Decision of the National Labor Relations Commission.^[64] *Eastern Shipping* filed a Petition for Review before this court, arguing that the final and executory Decision of the National Labor Relations Commission cannot be modified by the Court of Appeals.^[65] This court held that: