

SECOND DIVISION

[G.R. No. 212878, February 01, 2016]

MARLOW NAVIGATION PHILS., INC., MARLOW NAVIGATION CO., LTD., W. BOCKSTLEGEL REEDEREI (GERMANY), ORLANDO D. ALIDIO AND ANTONIO GALVEZ, JR., PETITIONERS, VS. WILFREDO L. CABATAY, RESPONDENT.

DECISION

BRION, J.:

We resolve the present petition for review on *certiorari*^[1] which seeks to nullify the May 31, 2013 decision^[2] and June 4, 2014 resolution^[3] of the Court of Appeals in CA-G.R. SP No. 120698.

The Antecedents

The respondent Wilfredo Cabatay (*Cabatay*) entered into a ten-month contract of employment as *able seaman* with the **petitioners** Marlow Navigation, Philippines, Inc., (*agency*) and its principal Marlow Navigation Co., Ltd., (*Marlow Navigation*), for the vessel *M/V BBC OHIO*. The contract was supplemented by a collective bargaining agreement or the Total Crew Cost Fleet Agreement (*TCC-FA*)^[4] between the International Workers Federation (*ITF*) and Marlow Navigation. He boarded the vessel on November 23, 2009.

While on duty on December 30, 2009, Cabatay fell from a height of four meters in his work area; his side, shoulder, and head were most affected by his fall. He was brought to a hospital in Huangpu, China, where he was diagnosed with "*Left I-4 Verterbra Transverse Bone broken (accident)*." He was declared unfit to work for 25 days. On January 7, 2010, he was medically repatriated.

Cabatay arrived in Manila on January 8, 2010, and was immediately referred to the company doctor, Dr. Dolores Tay (*Dr. Tay*), of the International Health Aide Diagnostic Services, Inc., for examination and treatment. He underwent several tests, including a CT scan and a repeat audiometry and MRI.

On March 19, 2010, Cabatay complained of right shoulder pain. On April 13, 2010, he underwent surgery on the *rotator cuff* on his shoulder. After surgery, he missed several appointments with Dr. Tay and failed to undergo his physiotherapy on time, starting it only on May 25, 2010. Earlier, or on May 7, 2010, Dr. Tay gave Cabatay an interim disability assessment of Grade 10 for his shoulder injury and Grade 3 for impaired hearing. She expected Cabatay's hearing and shoulder problems to be resolved within three to six months, although he was still under treatment as of June 3, 2010.

On June 9, 2010, Dr. Tay issued a combined 36% disability assessment for Cabatay

based on the compensation scale under the TCC-FA,^[5] thus: (1) 5% for communication handicap of severe to total; (2) 2% for hearing handicap of mild to medium; (3) 3% compensation for each ear—hampering *tinnitus* and distortion of hearing; (4) 8% for his spine injury with medium severe fracture without reduction of mobility; and (5) 15% for his shoulder injury, with right shoulder elevation up to a 90-degree angle.

Meantime, or on May 11, 2010, Cabatay filed a complaint against the petitioners for permanent total disability compensation, sickness wages, damages, and attorney's fees. While he did not dispute the company doctor's findings, he argued that he was entitled to permanent total disability benefits since he had lost his employment (profession) due to his injury which, he claimed, is compensated under the TCC-FA at US\$125,000.00.

The Compulsory Arbitration Rulings

In his decision^[6] of January 4, 2011, Labor Arbiter (LA) Quintin B. Cueto III found that Cabatay had lost his employment as a seaman and awarded him permanent total disability compensation of US\$125,000.00 under the TCC-FA. The evidence, LA Cueto stressed, showed that Cabatay was permanently unfit for sea service in any capacity, despite the company doctor's 36% disability grading. He considered Dr. Tay's prognosis of the resolution of Cabatay's hearing problem from three to six months a mere optimistic assessment.

The petitioners appealed to the National Labor Relations Commission (NLRC) which rendered a decision^[7] setting aside LA Cueto's award. It also ordered the petitioners to pay Cabatay, jointly and severally, \$45,000.00 in permanent partial disability compensation equivalent to Dr. Tay's combined 36% disability assessment, plus \$1,000.00 attorney's fees.

Cabatay moved for, but failed to obtain, a reconsideration from the NLRC, leaving him no option but to seek relief from the CA through a Rule 65 petition for *certiorari*. He charged the labor tribunal with grave abuse of discretion for setting aside LA Cueto's award due to his failure to question Dr. Tay's findings, without ruling on the substantive issues of the case.

The CA Decision

In its decision under review, the CA granted the petition, reversed the NLRC ruling, and reinstated LA Cueto's award. It held that under existing jurisprudence,^[8] Cabatay's disability had become permanent total, considering that while he was injured on December 30, 2009, he was still being given medical attention on June 3, 2010, a period of more than 120 days, or a total of 155 days.

The CA explained that while the treatment can be extended up to a maximum of 240 days as in Cabatay's case, he is considered under temporary disability within the same period. His condition, it pointed out, "is still subject to the fact that the company physician has to make a determination whether he is fit for sea service or not; in any event, it did not negate the fact that if the seafarer was disabled continuously for more than 120 days, he is considered permanently disabled."^[9] It noted that Dr. Tay had not declared Cabatay fit to work within the 240-day period.

The petitioners moved for reconsideration, reiterating the same arguments they raised in the petition. Additionally, they manifested that Cabatay had already executed the NLRC award of \$46,000.00 (\$45,000.00 disability compensation and \$1,000.00 as attorney's fees), thereby accepting "the correctness and propriety of the judgment award."^[10] This was the reason, they explained, why they earlier moved to have the case declared moot and academic.^[11] The appellate court denied the motion.

The Petition

The petitioners now ask the Court for a reversal of the CA rulings on the grounds that: (1) Cabatay's claim had been mooted when he enforced the NLRC award; (2) he is not entitled to permanent total disability compensation as Dr. Tay gave him only a combined 36% disability rating; and to damages, as they were in good faith in responding to his condition; (3) under the circumstances, his inability to work for more than 120 days does not constitute permanent total disability; and (4) petitioners Antonio Galvez, Jr., and Orlando Alidio are not liable to Cabatay's claim since they are mere corporate officers of the agency.

The petitioners insist that Cabatay is entitled only to \$45,000.00 in disability compensation representing the combined 36% disability rating given to him by Dr. Tay, and which had already been paid to him. This disability rating, they stress, was based on the compensation schedule under the very same TCC-FA relied upon by the labor arbiter for his decision. On the state of Cabatay's health, they urge the Court to take notice that his condition had "vastly improved as a result of his treatment, including arthroscopy surgery which the petitioners provided to him."^[12]

Further, the petitioners maintain that while Cabatay argues that he has already lost his profession and is entitled to 100% compensation, Section 19.3 on *Permanent Medical Unfitness* of the TCC-FA provides that "*any seafarer assessed at less than 50% disability under the attached Annex 3 **but certified as permanently unfit for further sea service by a doctor appointed mutually by the Owners/Managers and the ITF shall be entitled to 100% compensation.***"^[13]

The above CBA provision, they point out, was ignored in the resolution of Cabatay's claim. They submit that they proposed to have his medical condition referred to a mutually appointed doctor for determination, but he refused. His refusal, they argue, "should be taken as an admission against his interest."^[14]

The petitioners dispute the CA's pronouncement that Cabatay's mere inability to perform his duties for 120 days rendered him totally and permanently disabled. They contend that the 120-day rule for permanent total disability does not apply to his case since the company-designated physician had already made an assessment of his disability, which should be respected, pursuant to Section 20 (B) 3 of the POEA-SEC.

Lastly, the petitioners reiterate that Cabatay is not entitled to damages and attorney's fees because they have not committed any act of bad faith in dealing with him. From the moment he was repatriated, they point out, he was taken care of, and was referred to the company doctor for examination and treatment until he

attained maximum cure.

Cabatay's Position

In his comment^[15] dated September 22, 2014, Cabatay prays for a dismissal of the petition for lack of merit, contending that:

1. His claim for full disability benefits had not been mooted even after he secured the execution of the \$46,000.00 awarded by the NLRC. The ruling in *Career Philippines Ship Management, Inc. v. Geronimo Madjus*,^[16] invoked by the petitioners, is not squarely applicable in his situation. In that case, the manning agency executed the judgment award in favor of the seafarer to prevent its imminent execution while it pursued its petition for *certiorari* with the CA.

In the same case, the Court considered the *Conditional Satisfaction of Judgment* as an amicable settlement between the parties, which rendered the agency's petition for *certiorari* academic, thereby putting closure to the case; otherwise, it would place the seafarer at a disadvantage. The Court explained that while the agency had other remedies available to it, such as its petition for *certiorari* itself and eventually an appeal to the Court, the seafarer could no longer pursue other claims, including the award of interest that may accrue during the pendency of the case.

In the present dispute, Cabatay points out, he was the one who enforced the NLRC award, without prejudice to his petition for *certiorari* before the CA. He simply moved for execution of the uncontested portion of the award, which is allowed under the NLRC rules of procedure; but unless he makes an unequivocal waiver of his right to pursue the case, the petitioners should not assume that he is giving up the balance of his claim.

2. He is entitled to full disability benefits. The TCC-FA, whose applicability the petitioners acknowledge, requires only that the seafarer is deprived of employment on account of an accident which occurred during his tour of duty, to be entitled to 100% compensation. Thus, all that he has to prove is the loss of his profession because of his disability.

He insists that he has already lost his employment or his "profession." The company doctor's certification showed that he has a severe communication handicap, severe fracture of the spine, and impeded elevation of the arm at 90 degrees. Moreover, the petitioners themselves have not re-hired him. This is an indication, he submits, that he would no longer pass any pre-employment medical examination (P.E.M.E).

3. The award of attorney's fees to him is proper because he had to secure the services of a lawyer in order to vindicate his rights as there was no assurance that the petitioners would have granted his just demands had the matter not gone through the legal process.

4. Finally, the inclusion of Galvez and Alidio as parties in the case is called for because they are responsible officers of an agency engaged in the hiring of ship manpower; as such, they are solidarity liable with the agency and the foreign employer for his disability compensation claim under Section 10 of R.A. No. 8042,