

SECOND DIVISION

[G.R. No. 204769, June 06, 2016]

**MAGSAYSAY MARITIME CORP., CSCS BMINTERNATIONAL NV
AND/OR MARLON* RONO, PETITIONERS, VS. RODEL A. CRUZ,
RESPONDENT.**

DECISION

DEL CASTILLO, J.:

The company-designated doctor is expected to arrive at a definite assessment of the fitness of the seafarer to work or to determine the degree of his disability within a period of 120 or 240 days from repatriation, as the case may be. If after the lapse of the 120/240-day period the seafarer remains incapacitated and the company-designated physician has not yet declared him fit to work or determined his degree of disability, the seafarer is deemed totally and permanently disabled.^[1]

This Petition for Review on *Certiorari* assails the August 17, 2012 Decision^[2] of the Court of Appeals (CA) in CA-GR. SP No. 120464. The CA set aside the March 31, 2011 Decision^[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-000944-10, and reinstated the September 27, 2010 Decision^[4] of the Labor Arbiter (LA) in NLRC NCR OFW Case No. (M)II-16203-09 ordering Magsaysay Maritime Corp. (MMC) and CSCS International NV (CSCS) to jointly and severally pay Rodel A. Cruz (respondent) US\$39,180.00, as disability compensation, and 10% thereof as attorney's fees. Also challenged is the December 3, 2012 CA Resolution^[5] denying reconsideration of its August 17, 2012 Decision.

Factual Antecedents

On November 5, 2007, MMC, in behalf of its foreign principal, CSCS, employed respondent as housekeeping cleaner on board the vessel Costa Fortuna. Respondent's employment was for eight months (with three months extension upon mutual consent of the parties) with basic monthly salary of €306.00 and other benefits.^[6] On January 27, 2008, respondent boarded the vessel.^[7]

On April 23, 2008, while lifting heavy objects in the course of performing his duties, respondent experienced low back pain.^[8] As a result, he was repatriated on June 19, 2008, and was immediately referred to Dr. Benigno A. Agbayani (Dr. Agbayani), the company-designated doctor.^[9]

On June 20, 2008, Dr. Agbayani noted that there was no limitation on respondent's motion but the latter still complained of pain on forward flexion of the lumbar spine.^[10] On July 7, 2008, respondent's magnetic resonance imaging (MRI) scan revealed that he was afflicted with "Mild L4-5 disc bulge [but with n]o evidence of a focal disc

herniation."^[11] As of August 1, 2008, respondent had undergone 13 physical therapy (PT) sessions. He had shown improvement but still complained of slight but tolerable pain upon trunk flexion.^[12]

On September 5, 2008, Dr. Agbayani diagnosed respondent with "Discogenic pain L4/L5; Myofascial pain syndrome erection sprain S/P Provocative Discogram and [P]ercutaneous Nucleoplasty." He gave respondent an interim disability rating of Grade 8 for "Moderate rigidity of two thirds loss of motion or lifting power of the trunk."^[13]

On September 22, 2008, Dr. Agbayani declared that despite more than 20 PT sessions, respondent showed little signs of improvement and possible surgical intervention was being considered. He noted that respondent would be referred to the Pain Management Clinic.^[14]

On October 2, 2008, Dr. Agbayani reported that the Pain Management Specialist recommended nucleoplasty, provocative discogram and trigger joint injection on respondent.^[15] On November 4, 2008, respondent successfully underwent provocative discogram and percutaneous nucleoplasty.^[16] On November 12, 2008, Dr. John Joseph O. Laceste (Dr. Laceste), Pain Management Specialist, declared that respondent's "discogenic pain over the L4-5 area has improved by at least 85% to a pain score of 0-1/10."^[17]

On December 11, 2008, respondent underwent another MRI scan revealing that he was suffering from mild degenerative changes in the lumbar spine which remained unchanged when compared to his July 7, 2008 MRI scan.^[18] On December 12, 2008, Dr. Agbayani declared that respondent's illness was work-related.^[19]

On January 21, 2009, respondent received sickness allowance for 120 days (from June 18, 2008 to October 15, 2008) amounting to €1,198.66.^[20]

On February 12, 2009, Dr. Agbayani reported that respondent's condition had not improved despite various treatments since April 2008. Nevertheless, he reiterated that respondent's condition was work-related.^[21]

On March 10, 2009, respondent's MRI scan showed that there was "small central disc protrusion with disc desiccation changes at L4-L5 level" but there were no compression deformities, spondylolisthesis nor spinal canal stenosis.^[22]

On June 1, 2009, after almost one year from respondent's repatriation, Dr. Agbayani gave respondent a disability rating of Grade 8 for "moderate rigidity or two third loss of motion or lifting power of the trunk."^[23]

On June 11, 2009, Dr. Laceste noted respondent's slight numbness over his right buttock and posterior thigh when standing for one to two minutes, and his pain over the L4-L5 area as well as slight tenderness of his sacro-iliac joints.^[24]

Consequently, on November 25, 2009, respondent filed a Complaint^[25] for permanent and total disability benefits, sickness allowance, damages and attorney's

fees against MMC, Marlon Rono, its President, and CSCS (petitioners).^[26]

On February 5, 2010, respondent's physician-of-choice, Dr. Venancio P. Garduce^[27] (Dr. Garduce), opined that it would be impossible for respondent to work as a seaman and recommended a disability rating of Grade 3.^[28]

Respondent argued that he is entitled to disability benefits because of the reasonable connection between his work and his illness. He stressed that before his embarkation he was declared fit to work; as such, it can be logically inferred that he acquired his illness while aboard the vessel and by reason of its harsh working environment. He added that he is entitled to disability benefits as he already suffered loss and impairment in his earning capacity.^[29]

Respondent denied that he is guilty of medical abandonment and insisted that he did not cause delay in his treatment.^[30] According to him, his refusal to undergo surgery was valid as he previously experienced "pre-operative awareness" which caused post-traumatic stress disorder. Allegedly, he feared that he would experience the same trauma if an operation be pursued.^[31]

For their part, petitioners affirmed that after having been medically repatriated respondent was diagnosed of mild L4-L5 disc bulge. They, nonetheless, asserted that respondent underwent PT sessions but in September 2008, he started to malingering and complained of pain; thus, his attending doctor referred him to a Pain Management Team. They alleged that respondent abandoned his scheduled nucleoplasty on October 24, 2008 but admitted that the procedure pushed through on November 4, 2008.^[32] They also averred that respondent refused to undergo the surgery scheduled on February 23, 2009.^[33] They insisted that respondent is estopped from claiming permanent and total disability benefits because the delay in his treatment is due to his own fault.^[34]

Ruling of the Labor Arbiter

On September 27, 2010, the LA rendered his Decision^[35] ordering MMC and CSCS to jointly and severally pay respondent disability compensation amounting to US\$39,180.00 or its peso equivalent at the time of payment and 10% thereof as attorney's fees.

According to the LA, respondent already received sickness allowance for 120 days amounting to €1,198.66. Thus, the only remaining issue is whether he is entitled to disability benefits. On this, the LA gave credence to the fact that respondent was medically repatriated and that his "lumbajr disc disease (disc desiccation) L4-L5 with mild disc herniation lumbar" was work-related, as confirmed by the company-designated doctor himself. Accordingly, the LA awarded disability benefits to respondent amounting to US\$39,180.00 based on the Grade 3 disability rating given by respondent's physician-of-choice. He also awarded attorney's fees to respondent as he was compelled to litigate and incur expenses to protect his rights.

Petitioners appealed before the NLRC.

According to petitioners, respondent was guilty of delay and medical abandonment.

They, however, contended that should respondent be entitled to disability benefits, the same must be pursuant to a Grade 8 disability rating given by the company-designated doctor. They also posited that the award of attorney's fees was unjustified as there were valid grounds denying respondent's claim for disability compensation.

Ruling of the National Labor Relations Commission

On March 31, 2011, the NLRC modified^[36] the LA Decision. It found respondent entitled to partial and permanent disability compensation of Grade 8 amounting to US\$16,795.00.

The NLRC upheld the company-designated physician's Grade 8 disability rating on the ground that it was supported by medical findings and was arrived at after close monitoring and treatment of respondent. It also deleted the award of attorney's fees as petitioners faithfully complied with their duties, including payment of sickness allowance.

On May 19, 2011, the NLRC denied^[37] respondent's Motion for Reconsideration.

Respondent filed a Petition for Certiorari with the CA arguing that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that he is not entitled to US\$39,180.00 and to attorney's fees.

Ruling of the Court of Appeals

On August 17, 2012, the CA granted^[38] the Petition and accordingly set aside the March 31, 2011 NLRC Decision. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is GRANTED and the assailed NLRC Decision dated 31 March 2011 in NLRC LAC No. 11-000944-10 is NULLIFIED and SET ASIDE. In lieu thereof, the Labor Arbiter's Decision dated 27 September 2010 in NLRC NCR OFW CASE No. (M)I 1-16203-09 is REINSTATED.^[39]

The CA decreed that while it is a rule that the company-designated physician is tasked to determine the degree of disability of a seafarer, herein company-designated doctor assessed respondent's disability as Grade 8 only on June 1, 2009, or almost a year after his repatriation on June 19, 2008. It also noted that respondent failed to resume employment even after a year of continuous medical treatment, as he was still under treatment even until June 11, 2009. Furthermore, the CA held that respondent is entitled to attorney's fees equivalent to 10% of the total monetary award, pursuant to Article 2208^[40] of the Civil Code.

On December 3, 2012, the CA denied⁴¹ petitioners' Motion for Reconsideration.

Issues

Thus, petitioners filed this Petition raising the following issues:

[CAN] RESPONDENT [BE] PRESUMED TOTALLY AND PERMANENTLY DISABLED ENTITLING HIM TO MAXIMUM BENEFITS UNDER THE EMPLOYMENT CONTRACT?

AS BETWEEN THE COMPANY-DESIGNATED DOCTORS (WHO ADMINISTERED TREATMENT AND MONITORED TREATMENT) AND A PRIVATE DOCTOR FROM WHOM MERELY A 'SECOND' OPINION WAS SOUGHT, WHOSE FINDING MUST PREVAIL?[42]

Petitioners' Arguments

Petitioners posit that credence should be given to the assessment of the company-designated physician as he regularly monitored and treated respondent. They further assert that the company-designated doctor gave his declaration on respondent's condition on the 77th day from his (respondent's) initial referral, and thus within the 240-day period under the prevailing jurisprudence. They likewise maintain that respondent caused delay in his treatment; as a result he was guilty of medical abandonment.

Respondent's Argument

Respondent counters that the CA correctly reinstated the LA Decision entitling him to disability benefits because his earning capacity was impaired by reason of his ailment. He also claims that he did not cause delay or abandoned his treatment. He stresses that his refusal to continue with his surgery is justified because it is a normal choice of a person under normal circumstances. He adds that the brochure given by the company-designated doctor indicated that the final decision of whether to pursue surgery or not rests in him. He likewise maintains that he did not malingering since the feeling of pain is a usual occurrence during an operation.

Our Ruling

The Petition is without merit.

To begin with, there is now no dispute that respondent's illness is work-related, as the same had been repeatedly confirmed by the company-designated doctor himself. The remaining issues are: whether respondent is entitled to disability compensation; and, whether respondent committed medical abandonment, such that, even if he sustained a disability he is not entitled to any compensation.

Petitioners insist that on the 77th day from respondent's initial referral, the company-designated doctor gave him a Grade 8 disability assessment, which should have been given weight and credence. They likewise maintain that respondent committed delay and medical abandonment since he did not pursue the suggested surgery. As such, petitioners raise questions of fact, in effect, requiring the Court to re-examine the probative weight of the evidence adduced.

As a rule, the Court is not a trier of fact and only questions of law are reviewable under a Rule 45 Petition. This principle applies with greater force in labor cases as