

## THIRD DIVISION

[ G.R. No. 220608, August 31, 2016 ]

**MARCELINO T. TAMIN, PETITIONER, VS. MAGSAYSAY MARITIME CORPORATION AND/OR MASTERBULK PTE. LTD., RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### **Nature of the Case**

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the June 25, 2015 Decision<sup>[1]</sup> and the September 18, 2015 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 137055, which reversed and set aside the June 11, 2014 Decision<sup>[3]</sup> and the August 4, 2014 Resolution<sup>[4]</sup> of the Panel of Voluntary Arbitrators (VA) which granted a seafarer's claim for permanent and total disability benefits.

#### **The Facts**

On June 1, 2011, petitioner Marcelino T. Tamin entered into a contract of employment<sup>[5]</sup> with respondent Magsaysay Maritime Corporation (Magsaysay), for and in behalf of its principal, respondent Masterbulk Pte. Ltd. (Masterbulk), to work as Chief Cook on board MV Star Heranger for a period of nine (9) months with a basic monthly salary of US\$865. Aside from the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), the employment contract is also governed by a Memorandum of Agreement<sup>[6]</sup> entered into by and among Magsaysay, Masterbulk, and the Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP), as well as a Collective Bargaining Agreement (CBA).<sup>[7]</sup>

After undergoing the requisite Pre-Employment Medical Examination (PEME) and having been declared as "fit for sea duty," petitioner immediately assumed his responsibilities on-board the vessel.

As chief cook, petitioner was the overall in charge of the food catering department. His responsibilities included the supervision of activities of the kitchen personnel, coordination with the ship's Master on food supplies and equipment, preparation of meat for cooking, and inspection of the galley mess hall and equipment.

On November 16, 2011, while on kitchen duty and chopping pork knuckles for lunch, the chopping knife accidentally slid down and cut petitioner's left forefinger at about 1.5 inches, causing it to detach from the joint bone. The Chief Officer and Second Officer immediately applied paraffin gauze and prescribed antibiotics to petitioner to prevent infection. Petitioner was then brought to a hospital in China on November

18, 2011 for removal of the damaged tissue and repair of his finger.

On November 27, 2011, petitioner was repatriated and referred to the company-designated physician, Dr. Benigno Agbayani, Jr. (Dr. Agbayani), at the Manila Doctors Hospital. Dr. Agbayani found that there was a failed replantation of petitioner's injured finger; thus, amputation was recommended. On November 30, 2011, petitioner underwent "tenolysis, amputation of left index finger" and was discharged from the hospital on December 3, 2011. Thereafter, he was subjected to physical and occupational therapy sessions. In a Final Out Patient Consult Report<sup>[8]</sup> dated May 11, 2012, Dr. Agbayani assessed petitioner with a Grade 11 disability, but declared him as "fit to return to work as seafarer." Dr. Agbayani's Report states:

Final Diagnosis: Amputation/Removal of non viable replanted finger and wound closure left index finger.

Recommendation: Our patient is now fit to return to work as a seafarer.

Compensation grading: Our patient's schedule of impediment based on the POEA schedule equivalent to 'Total loss of index finger' or Grade 11.

Notwithstanding Dr. Agbayani's "fit to work" recommendation, petitioner continued to feel persistent pain on his left hand, rendering him incapable to close it or carry even light objects with it. Thus, on June 22, 2012, he wrote a letter<sup>[9]</sup> to respondent Magsaysay requesting further treatment.

Not receiving any response, petitioner wrote another letter<sup>[10]</sup> on July 9, 2012 informing respondent Magsaysay of his intention to seek a second opinion from another doctor to determine his true condition. Respondents, however, referred him back to Dr. Agbayani, who saw petitioner on July 10, 2012 and noted a contracture of the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> fingers on his left hand. Dr. Agbayani then recommended another ten (10) sessions of physical therapy for petitioner.<sup>[11]</sup>

Meanwhile, on July 31, 2012, petitioner went to another orthopedic surgeon, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who found him permanently disabled with a Grade 9 impediment. Dr. Magtira explained in detail his diagnostic conclusion that the left-handed petitioner is unfit for further sea duties in any capacity:

On physical examination, the patient is ambulatory and well nourished. He complained of tenderness on the left hand. There is amputation of the distal phalanx with the presence of wound on the stump of 2<sup>nd</sup> digits of the left hand. There is limitation of motion on his 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> digit with loss of [gripping] power of the left hand was observed. Patient is positive for phantom limb on the tip of index finger on the left hand.

**Mr. Tamin** remains incapacitated. Despite his previous surgeries, he is still experiencing pain of his amputated fingers and inability to grasp objects. He is therefore also not capable of working at his previous occupation from said impediment. x x x

x x x x

It is worth mentioning also that Mr. Tamin is a left handed person. The injury to his dominant hand is a big burden and addition to his disability. He presently does not have physical capacity to return to work he has performing at the time of his injury. He is therefore permanently **UNFIT** in any capacity for further sea duties.<sup>[12]</sup>

With the above findings, petitioner demanded payment of his disability benefits, which demand respondents refused to heed. Grievance proceedings were, thus, conducted during which petitioner turned down respondents' offer of US\$35,000 as settlement. Instead, petitioner requested for the amount of US\$100,000 as full payment of his disability benefits under the CBA.<sup>[13]</sup> As a result, the grievance proceedings proved unsuccessful and the parties brought the matter up for voluntary arbitration. The parties were then instructed to submit their respective position papers.

As per the parties' Submission Agreement, the issue to be resolved by the VA is petitioner's entitlement to sickness allowance, medical reimbursement and disability benefits as per CBA, attorney's fees, and other damages.<sup>[14]</sup>

Petitioner claimed that he was not restored to his pre-employment and pre-injury condition even after physical and occupational therapy, rendering him incapacitated to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform. He maintained that he is entitled to maximum compensation in view of his inability to work for more than 120 days as a result of the injury. Thus, so petitioner claimed, he is entitled to permanent disability benefits. Nevertheless, he still expressed his willingness to appoint a third doctor in accordance with the 2010 POEA-SEC.<sup>[15]</sup>

Respondents, on the other hand, claimed that it is the company-designated physician's disability assessment that is determinative of a seafarer's entitlement to disability benefits. Respondents argued that Dr. Agbayani's assessment of Grade 11 only entitles petitioner to an impediment rate of 4%, which is equivalent to US\$4,000 under the CBA.<sup>[16]</sup>

### **The Ruling of the VA**

On June 11, 2014, the VA rendered a Decision awarding full disability compensation to petitioner, disposing the case as follows:

**WHEREFORE, THE FOREGOING CONSIDERED,** judgment is promulgated ORDERING respondents, jointly and severally, to pay complainant full disability compensation in the amount of US\$100,000.00, plus 10% thereof by way of attorney's fees.

All other claims are hereby DENIED.

**SO ORDERED.**<sup>[17]</sup>

The focal point of the VA's Decision dealt with petitioner's capacity to go back to his former work as chief cook despite his disability. In this regard, the VA ruled that disability is intimately related to one's earning capacity. Since the nature of a chief cook's job requires the use of both hands and petitioner's injured hand cannot be

moved without pain and limitation, the VA was convinced that the disability has impaired petitioner's capacity to work as a chief cook on board a vessel.<sup>[18]</sup> Hence, so the VA held, petitioner's disability is total. The VA also found that petitioner's disability has gone beyond 240 days and so concluded that it is permanent.<sup>[19]</sup>

Respondents moved for reconsideration but the same was denied by the VA in its August 4, 2014 Resolution. Thus, respondents filed a petition for review with the CA.

Meanwhile, on October 17, 2014, the parties filed with the VA a Conditional Satisfaction of Judgment stating that respondents resorted to paying petitioner an amount of P4,829,880, without prejudice to the outcome of their petition for review pending before the CA. Petitioner undertook to return the money conditionally paid should the award be reversed.<sup>[20]</sup>

### **Ruling of the CA**

In its June 25, 2015 Decision, the CA resolved to grant respondents' petition for review. The *fallo* of the Decision reads:

**WHEREFORE**, based on the foregoing, the petition is **GRANTED**. The 11 June 2014 Decision and 04 August 2014 Resolution of the Honorable Panel of Voluntary Arbitrators in AC-305-NCMB-NCR-001-01-01-2014 are hereby **REVERSED and SET ASIDE**.<sup>[21]</sup>

In reversing the Decision of the VA, the appellate court held that a claim for disability benefits should be based on the findings and declaration of the company-designated physician who, in this case, declared a disability grading within the 240-day extension provided for by law. The CA made the following conclusions:

In the case at bench, this Court finds that the company-designated [physician] ha[s] complied with the responsibility incumbent upon [him]. Upon careful review of the records, [petitioner] started his treatment with Dr. Agbayani, Jr. on 27 November 2011 and was discharged on 03 December 2011. On May 2012, after his operation and treatment, he was given a disability grading of Grade 11 'total loss of index finger' and was declared fit for sea duty. Such declaration was made after 165 days from [petitioner's] treatment and well within the 240-day extension provided by law. Thus, this Court gives credence to the findings given by the company-designated [physician] as to [petitioner's] disability.<sup>[22]</sup>

The CA also found that the CBA did not provide for any permanent unfitness clause; hence, no grounds exist in the CBA to warrant an award of maximum disability. Moreover, the CA ruled that petitioner disregarded the procedure laid out in the POEA-SEC as regards the appointment of a third doctor.

Petitioner filed a Motion for Reconsideration, while respondents filed a Manifestation with Motion for the restitution of the amount they paid to petitioner. In its Resolution dated September 18, 2015, the CA denied petitioner's Motion for Reconsideration and granted respondents' Manifestation with Motion.

Hence, the instant petition.

## **The Issues**

Petitioner anchors his plea for the reversal of the assailed Decision on the following grounds:<sup>[23]</sup>

### **I.**

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW WHEN IT FAILED TO HOLD THAT PETITIONER'S DISABILITY IS PERMANENT AND TOTAL IN THE ABSENCE OF A DEFINITE AND FINAL ASSESSMENT OF FITNESS OR PERMANENT DISABILITY FROM THE COMPANY-DESIGNATED PHYSICIAN WITHIN THE 240-DAY PERIOD.

### **II.**

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN DISMISSING THE DISABILITY CLAIM ALLEGEDLY BECAUSE PETITIONER DID NOT SECURE THE OPINION OF A THIRD DOCTOR

### **III.**

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN ORDERING RESTITUTION OF THE EXECUTED JUDGMENT AWARD.

Succinctly put, the pivotal issue to be resolved is whether or not petitioner is entitled to permanent and total disability benefits.

Petitioner postulates, in the main, that the May 11, 2012 assessment of the company-designated physician cannot be deemed as final since, on July 20, 2012, he still reported back to the company-designated physician who recommended that he undergo further physical therapy due to the contracture of the other fingers of his left hand. As such, the POEA-SEC provision regarding the appointment of a third doctor does not apply in his case since there is no assessment to contest as the company-designated physician failed to come up with a final and definite assessment of his condition.

In their Comment, respondents hinge their arguments on the CA's findings that the CBA involved does not have a permanent unfitness clause; that the 240-day rule does not apply to the case since the company doctor timely assessed petitioner; and that no third doctor was appointed so the opinion of the company doctor prevails.

## **The Court's Ruling**

The Court resolves to grant the petition.

### **The 120/240-day rule still subsists under the 2010 POEA-SEC**

Respondents argue that the "120/240-day rule" is a thing of the past and is rendered obsolete by the 2010 version of the POEA-SEC. According to respondents, the provisions under the POEA-SEC providing that disability is not determined on the basis of duration of inability to work but on disability gradings alone should be recognized.<sup>[24]</sup> Their contention is inaccurate.