

THIRD DIVISION

[G.R. No. 202114, November 09, 2016]

ELMER A. APINES, PETITIONER, VS. ELBURG SHIPMANAGEMENT PHILIPPINES, INC., AND/OR DANILO F. VENIDA, RESPONDENTS.

DECISION

REYES, J.:

Before this Court is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court filed by Elmer A. Apines (Apines) to assail the Decision^[2] rendered on January 26, 2012 and Resolution^[3] issued on May 30, 2012 by the Court of Appeals (CA) in CA-G.R. SP No. 114221. The dispositive portion of the assailed decision reads:

WHEREFORE, the instant petition is hereby **GRANTED** and the NLRC Decision dated December 14, 2009 and Resolution dated April 14, 2010 are **SET ASIDE**. The Complaint for total and permanent disability benefits, reimbursement of medical, hospital and transportation expenses, moral and exemplary damages, sickwage allowance, attorney's fees and legal interest is hereby **DISMISSED**. In view of the payment made to [Apines] by petitioners Elburg Shipmanagement Philippines, Inc. and Danilo F. Venida in satisfaction of NLRC Decision dated December 14, 2009 and Resolution dated April 14, 2010, [Apines] is hereby directed to return to petitioners Elburg Shipmanagement Philippines, Inc. and Danilo F. Venida the amount of Three Million Twenty[-]Nine Thousand Eighty[-]Eight Pesos [and] 92/100 (P3,029,088.92).

SO ORDERED.^[4]

The assailed Resolution^[5] dated May 30, 2012 denied Apines' motion for reconsideration.^[6]

Antecedent Facts

Elburg Shipmanagement Philippines, Inc. (ESPI) is a local manning agency, with Danilo F. Venida as representative (collectively, the respondents). Emirates Trading Agency LLC (ETAL) is among ESPI's foreign principals.^[7]

On September 11, 2007, Apines boarded ETAL's ship, M/V Bandar TBN Trans Gulf, for an eight-month engagement as bosun.^[8]

Apines claimed that sometime in the third week of September, a British surveyor was on board the ship to inspect the cargo hold. Captain Glicerio Castañares (Capt. Castañares) and Chief Mate Edgardo Llevares instructed Apines to put an apparatus

on the top tank of the cargo hold to check for possible leaks. Apines promptly complied with the order. On his way up from the cargo hold, he accidentally stepped on scattered iron ore pellets causing his left knee to strongly hit the steel railings of the ladder, and for him to slip and fall.^[9]

According to Apines, despite a sprain and swollen ankle, he was able to stand up and walk. When the pain eventually became intolerable, Apines informed Capt. Castañares about his condition. Apines was given analgesics. However, his request to be brought to the nearest port for medical attention remained unheeded since the ship was still on voyage. Further, whenever the ship reached a port, Apines was assigned as a crane driver.^[10]

On November 10, 2007, Apines consulted with an orthopedic surgeon named Dr. Abraham George (Dr. George) when the ship reached the Port of Bahrain. Dr. George's Medical Report^[11] reads:

Symptoms: PAIN ON THE LEFT KNEE (SWELLING)

When did the sym[p]toms start: 1 MONTH+

Diagnosis: LATERAL COLLATERAL LIGAMENT SPRN
? MEDIAL MENISCAL INJU

Is declared: FIT Yes No

 UNFIT Yes No

1) The patient must attend the Doctor again on: WITH MRI REPORT

2) The seaman must go to Hospital for MRI SCAN-LEFT KNEE

3) Special Remarks: MEDICATIONS AND HINGED KNEE BRACE GIVEN

x x x x

Present History

[P]ain Left Knee since 45 days after a fall on ship at work. Now has pain on climbing at work

Management Plan

Ref to Ortho consult

Bland diet/

Advised MRI scan of the left knee

Diagnosis

5355 GASTRITIS. MAIN*

844 SPRAIN OF KNEEA LEG*, MAIN,*

Left?? OA

8440 SPRAIN LATERAL COLL LIG, MAIN,*

LEFT KNEE

7171 DERANG **ANT MED MENISCUS**,zClinical,*
LEFT KNEE

Orders

x x x x

Elmetacin solution 50 ml.^[12] Qty = 1, Verified

Celebrex 200 Mg. Cap,^[13] Qty = 20, Verified

x x x x^[14] (Emphasis ours)

In February of 2008, Apines once again complained of pain in his left knee and requested for a medical check-up when the ship reached Jubail, Saudi Arabia.^[15] Dr. Vicar Hussain's (Dr. Hussain) Medical Report^[16] dated February 5, 2008 indicates the following:

Sym[p]toms: PAIN ON THE LEFT KNEE (**M.R.I. SCAN - LEFT KNEE RECOMMEND**).

When did the sym[p]toms start: **Pain & swells 14 [left] knee - 4 mth**

Diagnosis: O.A. 14 [left] knee x x x

Is declared: FIT Yes No **but Pt needs rest for couple of days**

UNFIT Yes No

1) The patient must attend the Doctor again on: **after 7 days**

2) The seaman must go to Hospital for **[MRI SCAN - LEFT KNEE]**.

3) Special Remarks: **Medical & Pt needs MRI 14 [left] knee. Pt needs medication for long time**

x x x x^[17] (Emphasis ours)

Apines claimed that since the pain in his left knee even worsened, he requested for immediate repatriation.^[18]

In Capt. Castañares' e-mail message^[19] sent to ESPI and Capt. Nicolo Terrei on February 5, 2008, it was stated that for a week already, Apines had been unable to work due to severe pain on his left knee. Per request, Apines had a medical check up in Jubail, Saudi Arabia. The doctor diagnosed Apines to be suffering from arthritis. Apines insisted that it was not merely arthritis, but the doctor was not able to determine any other ailment. Consequently, the doctor assessed Apines to be fit for sea duty. However, due to the worsening pain and inability to work, Apines requested to be promptly sent home to be able to consult with a doctor on his own account. Thus, Capt. Castañares sought Apines' repatriation to be arranged even if there was still no reliever to take the latter's place.

ESPI, however, denied that Apines had an accidental injury while on board the ship. In the Affidavit^[20] dated May 4, 2008 and e-mail message^[21] sent to ESPI on November 4, 2008, Capt. Castañares stated that in the duration of Apines' stay in the ship from September 15, 2007 to February 6, 2008, there was no report that the latter had figured in an accident or had sustained an injury.^[22]

Apines disembarked from the ship on February 7, 2008. The next day, Apines reported to ESPI's office.^[23] Teresa Mendoza (Mendoza) conducted an exit interview, and her report is partly quoted below:

Accdg. to crew:

- [D]uring an inspection on[]board, [he] had an accident when he slid and his knee had a strong contact against [the] steel railing of the ladder. He had a sprain and his ankle went swollen for four days (Sept.) His knee started to be painful on November. However, he can perform job on[]board but he [cannot] fully work and he is already moving slowly. [He] [f]inds [it] difficult to climb on cranes due to pain in the ankle.

- attached report (No report was given by the master regarding the incident, no evidence from Master's logbook)

x x x x

- was given pain reliever by the doctor (for arthritis and paracetamol)

- and was recommended to see doctor again after seven days but he [was] repatriated after x x x a day.

- was reported FIT TO WORK by the doctor.^[24]

The Crew De-briefing Checklist^[25] signed by Apines also indicated that his disembarkation was "for medical grounds (on his own request)."

ESPI claimed that it referred Apines to a company-designated doctor, but the latter consulted his own physicians instead.^[26]

On the other hand, Apines alleged that when he reported to ESPI's office right after his repatriation, Mendoza and Angela Padre (Padre) informed him that since he was declared fit to work, no assistance can be offered to him. Moreover, his unpaid salaries shall be offset against the cost of his airfare ticket in returning to Manila. Apines, thus, explained that he sought repatriation to undergo Magnetic Resonance Imaging (MRI) and obtain medical treatment pursuant to the recommendations of the doctors in Bahrain and Saudi Arabia. ESPI, however, stood its ground in denying to provide Apines with assistance.^[27]

Apines felt aggrieved by ESPI's lack of support, but his primary concern then was to obtain prompt medical attention. Upon his inquiry, ESPI referred him to Metropolitan Hospital, which at that time had no MRI machine. Apines thereafter proceeded to Chinese General Hospital (CGH), where he underwent MRI scanning under the

supervision of Dr. Celestina L. Cejoco (Dr. Cejoco).^[28] Dr. Cejoco's Consultation Report,^[29] dated February 14, 2008, included the following impressions: (1) "*no acute bony trabecular injury or fracture*"; (2) "*oblique inferior surface tear involving the posterior horn of the medial meniscus*"; (3) "*small to moderate amount of joint effusion*"; and (4) "*findings are consistent with osteoarthritis.*"

On February 20, 2008, Apines also consulted Dr. Patrick O. Leh (Dr. Leh), an orthopedic surgeon in CGH. The Medical Certificate^[30] issued by Dr. Leh indicated that Apines had "*degenerative osteoarthritis*" and "*medial meniscal tear*" in his left knee. Dr. Leh assessed that Apines "*may return to work after 30 [to] 45 days,*" but "*needs continued medical treatment for osteoarthritis.*" Apines was likewise advised to undergo meniscectomy^[31] and to consult with a company-accredited orthopedic surgeon.^[32]

On June 6, 2008, Apines filed before the National Labor Relations Commission (NLRC) a Complaine^[33] for total and permanent disability benefits, reimbursement of medical, hospital and transportation expenses, moral and exemplary damages, sickness allowance, attorney's fees and legal interest.

On June 17, 2008, Apines was admitted at the Philippine General Hospital (PGH) and underwent arthroscopic meniscectomy on July 1, 2008. He was confined for 17 days and was finally discharged on July 4, 2008.^[34]

The Clinical Abstract^[35] and Discharge Summary^[36] signed by Dr. Patrick M. Dizon (Dr. Dizon) stated that Apines had Medial Meniscal Tear. Apines complained of pain in his left knee and difficulty in ambulation. Apines had informed the doctors that about nine or ten months before, he had slipped and twisted his left knee while walking or going down the stairs. Thereafter, he had persistent pain in his left knee, with associated locking symptoms. He only took Alaxan which gave him mere partial relief. The symptoms, however, progressed. Apines then underwent x-ray and MRI scans, and consulted with doctors at the CGH, before having been referred to the PGH for further management. After Apines' arthroscopic meniscectomy, he was still advised to continue with his rehabilitation, and was prescribed to take Cephalexin for seven days.

In their Position Paper^[37] filed before the NLRC, the respondents contended that Apines was not entitled to total and permanent disability benefits based on the following grounds: (1) Apines did not suffer any accident or injury while on board the ship as proven by Capt. Castañares' affidavit and the e-mail exchanges between the latter and Mendoza; (2) the medical reports issued abroad showed that Apines was fit to work; (3) Apines disembarked from the ship on his own accord as indicated in the Exit Interview Report and Crew De-briefing Checklist; (4) Apines failed to submit himself for post-employment medical examination and treatment by company-designated doctors; and (5) Apines' own physician, Dr. Leh, assessed that the former may return to work after 30 to 45 days.

Several conferences were held, but the parties failed to arrive at any settlement.^[38]

Rulings of the Labor Arbiter and NLRC