

FIRST DIVISION

[G.R. No. 207804, June 17, 2015]

ACE NAVIGATION COMPANY AND VELA INTERNATIONAL MARINE LIMITED, PETITIONERS, VS. SANTOS D. GARCIA, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated December 14, 2012 and the Resolution^[3] dated June 19, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123272, which reversed and set aside the Decision^[4] dated October 24, 2011 and the Resolution^[5] dated December 12, 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 08-000688-11 and, accordingly, ordered petitioners Ace Navigation Company (Ace Navigation) and Vela International Marine Limited (Vela International; collectively, petitioners) to jointly and severally pay respondent Santos D. Garcia (Garcia) total and permanent disability benefits in the amount of US\$80,000.00 and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.

The Facts

On November 3, 2009, Ace Navigation hired Garcia to work as a fitter for the vessel M/T Capricorn Star, owned by Vela International, for a period of eight (8) months, with a basic monthly salary of US\$850.00, guaranteed overtime pay of US\$475.07, and vacation leave pay of US\$223.56.^[6] As a registered member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), Garcia's employment was covered by a Collective Bargaining Agreement^[7] executed between petitioners and AMOSUP (VELA-AMOSUP CBA). Pursuant to the employment contract,^[8] Garcia boarded Vela International's vessel, M/T Capricorn Star on November 11, 2009.^[9]

On February 9, 2010, Garcia claimed that while doing grinding work, he slipped and fell, causing pain in his right arm, shoulder, and chest.^[10] As his condition persisted, he requested his superior for a medical check-up at the nearest port of call.^[11] Upon arrival of the vessel in Venezuela on May 17, 2010, Garcia underwent a medical consultation^[12] where he was diagnosed with "Contracture Muscular Abnormality" and was recommended to be repatriated. Thus, on May 20, 2010, Garcia was repatriated back to the Philippines.^[13]

Following Garcia's repatriation, he was initially diagnosed^[14] by company-designated physician Dr. Susannah Ong-Salvador (Dr. Salvador) to be suffering from

a work-related bilateral shoulder strain/sprain and a non-work-related ganglion cyst on his right wrist, as well as an incidental finding of *ureterolithiasis*.^[15] Garcia also underwent numerous magnetic resonance imaging examinations where it was discovered that he was suffering from bulges on his spine. Thus, through numerous medical consultations with the company-designated physician, Garcia received treatment for his medical condition that resulted from his accident, as well as for his subsequently-diagnosed kidney ailment.^[16]

Sometime in November 2010, Garcia received medical treatment from another company-designated physician, Dr. Nicomedes Cruz (Dr. Cruz), for the persistent pain he was experiencing on his shoulder and posterior cervical spine. Garcia was then advised to undergo operation to remove a disc in his spine, which he refused.^[17]

On November 8, 2010, Garcia filed a claim^[18] for total and permanent disability benefits against petitioners before the NLRC,^[19] docketed as NLRC NCR (M)-11-15744-10. In support of his position, Garcia averred that he consulted an independent physician, Dr. Nicanor F. Escutin (Dr. Escutin), who diagnosed him with a work-related total and permanent injury on his cervical spine, rendering him unfit to be a seaman in whatever capacity.^[20]

In their defense, petitioners asserted that Garcia's illnesses, *i.e.*, ganglion cyst and *nephrolithiasis*, are not work-related, and he was already declared fit to work on October 28, 2010 by his urologist.^[21] While petitioners admitted that Garcia continued to suffer pain on his right shoulder which necessitated continuous physical therapy sessions and medication, they nevertheless rejected Garcia's claim for total disability.^[22] In this relation, petitioners pointed out that on January 12, 2011, Dr. Cruz already recommended that Garcia be accorded disability rating of "Grade 10 – Moderate stiffness or two-thirds (2/3) loss of motion of the neck, based on the [Philippine Overseas Employment Administration (POEA)] Schedule of Disability Grading."^[23] Lastly, petitioners maintained that the aforesaid findings of the company-designated physician should be accorded utmost respect and consideration.^[24]

The LA Ruling

In a Decision^[25] dated June 28, 2011, the Labor Arbiter (LA) ruled in Garcia's favor, and accordingly, ordered petitioners to jointly and severally pay him permanent total disability benefits in the amount of US\$80,000.00 and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of payment.^[26]

The LA found that Garcia is entitled to permanent total disability benefits given that his physical condition prevented him from resuming his trade as a seaman since his repatriation on May 20, 2010 until the present, or for a period of more than 120 days.^[27] The LA gave credence to the findings of the independent physician, Dr. Escutin, over that of the company-designated physician, Dr. Cruz, opining that the assessment and declarations of a company-designated physician should not prejudice Garcia's claim for disability benefits, considering that a seafarer may

resort to other equally competent medical professionals to prove the nature of his injury.^[28] Lastly, the LA granted Garcia's claim for attorney's fees since he was forced to litigate and incur expenses for the protection of his rights and interests.^[29]

Dissatisfied, petitioners appealed^[30] to the NLRC, which was docketed as NLRC LAC No. 08-000688-11.

The NLRC Ruling

In a Decision^[31] dated October 24, 2011, the NLRC granted the appeal, and thereby, decreased the award of Garcia's disability benefits to US\$10,075.00 and deleted the award of attorney's fees in his favor.^[32]

Contrary to the findings of the LA, the NLRC found that since the company-designated physician, Dr. Cruz, assessed Garcia with a Grade 10 disability rating and that no other disability rating appears on record, Garcia was, thus, bound thereto.^[33] As such, he is only entitled to the aforesaid amount pursuant to the VELA-AMOSUP CBA, which is the prevailing law between petitioners and Garcia.^[34] The NLRC discredited the declaration of the independent physician, Dr. Escutin, that Garcia was permanently unfit for sea duty given that his disability report did not show that he conducted independent tests to verify his physical condition, but merely based his review on the medical findings of petitioners' designated physicians.^[35] Finally, the NLRC deleted the award of attorney's fees since petitioners acted within their rights in denying Garcia's claim for permanent total disability benefits.^[36]

Garcia moved for reconsideration^[37] which the NLRC denied in a Resolution^[38] dated December 12, 2011. Aggrieved, he filed a petition for *certiorari*^[39] before the CA.

The CA Ruling

In a Decision^[40] dated December 14, 2012, the CA reversed and set aside the ruling of the NLRC, and accordingly, reinstated that of the LA.^[41] The CA agreed with the LA that Garcia's inability to perform any gainful employment for a continuous period of 120 days from his repatriation rendered his disability total and permanent, and thus, Garcia should be entitled to the award of disability benefits in the amount of US\$80,000.00, as stated in the VELA-AMOSUP CBA.^[42]

Undaunted, petitioners sought for reconsideration,^[43] which was, however, denied in a Resolution^[44] dated June 19, 2013; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly declared Garcia to be entitled to permanent total disability benefits.

The Court's Ruling

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.^[45]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In a seafarer's claim for disability, the *onus probandi* falls on the seafarer to establish his claim for disability benefits by the requisite quantum of evidence to justify the relief sought.^[46]

Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC in ruling that Garcia is not entitled to total and permanent disability benefits, considering that the same is supported by substantial evidence and in accord with prevailing law and jurisprudence, as will be explained hereunder.

A judicious review of the records reveals that Garcia was indeed unable to obtain any gainful employment for more than 120 days after his repatriation; however, this fact does not ipso facto render his disability total and permanent. In *Vergara v. Hammonia Maritime Services, Inc.*,^[47] the Court held that the company-designated physician is given a leeway of an additional 120 days, or a total of 240 days from repatriation, to give the seafarer further treatment and, thereafter, make a declaration as to the nature of the latter's disability. Thus, it is only upon the lapse of 240 days, or when so declared by the company-designated physician, that a seafarer may be deemed totally and permanently disabled, *viz.*:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract [(SEC)] and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.**