

## SECOND DIVISION

[ G.R. No. 204845, June 15, 2015 ]

**BELCHEM PHILIPPINES, INC./UNITED PHILIPPINE LINES,  
FERNANDO T. LISING, PETITIONERS, VS. EDUARDO A. ZAFRA,  
JR., RESPONDENT.**

### D E C I S I O N

#### **MENDOZA, J.:**

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioners Belchem Philippines, Inc. (*Belchem*), United Philippine Lines (UPL) and Fernandino T. Lising (*collectively, petitioners*) assail the June 4, 2012 Decision<sup>[1]</sup> and the December 7, 2012 Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 121629, which *affirmed* the May 31, 2011<sup>[3]</sup> Decision of the National Labor Relations Commission (NLRC) awarding permanent total disability benefits to respondent Eduardo A. Zafra, Jr. (*Zafra*). The NLRC decision reversed the October 21, 2010 Decision<sup>[4]</sup> of the Labor Arbiter (LA).

#### **The Antecedents**

Zafra was hired as a "wiper" by Belchem, through its local manning agent UPL, for a period of four (4) months under a duly approved contract of employment.

Records reveal that on July 17, 2009, Zafra boarded MT Chemtrans Havel; that on September 30, 2009, he sustained injuries on his left knee after hitting the floor on his way to the ship's engine room to check for leaks in the machineries there; that after being initially examined on October 16, 2009<sup>[5]</sup> in Amsterdam by a doctor who advised him to undergo x-ray examination, he was repatriated on October 22, 2009 for further medical treatment in the Philippines; that on October 22, 2009, upon his arrival in the Philippines, he immediately reported to the UPL office and was sent to the petitioners' designated physician, Dr. Robert D. Lim (*Dr. Lim*), at the Metropolitan Medical Center, Marine Medical Services; that the attending physician found him to have "probable Medial Meniscal Tear, Left knee" and "Anterior Cruciate Ligament (ACL) Tear, Left Knee" which required surgery;<sup>[6]</sup> that on January 5, 2010, he underwent a procedure known as "Arthroscopic ACL Reconstruction" costing him more than one (1) week of confinement and subsequent rehabilitation measures for him to walk again; that on January 20, 2010, after noting that Zafra's condition improved, Dr. Lim gave an interim assessment of Grade 10 for the injuries he had suffered;<sup>[7]</sup> that on April 19, 2010, or within the 240-day treatment period, the attending doctor, William Chuasuan, Jr. (*Dr. Chuasuan, Jr.*), wrote a letter to Dr. Lim stating that the suggested disability grading of Zafra's injuries was 20% of Grade 10, which under the Philippine Overseas Employment Administration - Standard Employment Contract (*POEA-SEC*), was equivalent to US\$3,590.73. Dr. Chuasuan, Jr. wrote:

April 19, 2010

**ROBERT D. LIM, M.D.**

Marine Medical Services  
Metropolitan Medical Center

Re: Mr. Eduardo Zafra, Jr.

Case of 32 year old male, S/P Anterior Cruciate Ligament Reconstruction, Left.

His **suggested** disability grading is 20% of Grade 10 - stretching leg of the ligaments of a knee resulting in instability of the joint.

Respectfully yours,

**WILLIAM CHUASUAN, JR., M.D.**<sup>[8]</sup>

On July 5, 2010, much to the petitioners' surprise, Zafra filed a complaint<sup>[9]</sup> for payment of permanent total disability benefits, moral and exemplary damages and attorney's fees.<sup>[10]</sup> Attempts for an amicable settlement of the case failed.

On August 2, 2010, Zafra demanded a copy of his medical records from petitioners,<sup>[11]</sup> but he was not given one. The requested medical records were, however, later on attached to the petitioners' position paper filed before the LA.

On August 20, 2010, the Assistant Medical Coordinator of Marine Medical Services issued Zafra's Brief Clinical History, to wit:

Final Diagnosis (July 20, 2010) - Probable Medial Meniscal Tear, Left Knee; Anterior Cruciate Ligament Tear, Left Knee; S/P Arthoroscopic Anterior Cruciate Ligament Reconstruction, Left Knee with an incidental finding of Urinary Tract Infection.<sup>[12]</sup>

On October 21, 2010, the LA declared Zafra entitled to disability benefits in the amount of US\$3,590.73.<sup>[13]</sup> The LA reasoned out, among others, that Zafra's claim for the maximum benefit of US\$60,000.00 was unsubstantiated considering that (1) the assessment of the company-designated physician of his injury as Grade 10 should be respected; and (2) he failed to present the medical findings showing total and permanent disability. The dispositive portion of the LA decision reads:

**IN VIEW OF THE FOREGOING**, the respondent Corporation is directed to pay the complainant the amount of US\$3,590.73

The rest of the claims are dismissed for lack of merit.

**SO ORDERED.**<sup>[14]</sup>

On appeal, the NLRC *reversed* and *set aside* the findings of the LA and awarded US\$60,000.00 to Zafra after finding his injury permanent and total. It explained that, in disability compensation, what was being compensated was not the injury

*per se* but the incapacity to work. Considering that **more than 240 days** from date of repatriation had lapsed without any declaration of fitness to work from the company-designated physician, the NLRC found him entitled to receive permanent total disability benefit in the amount of US\$60,000.00. Thus:

**WHEREFORE**, premises considered, the Decision dated October 21, 2010 is hereby **SET ASIDE** and a new one entered ordering respondents jointly and solidarity to pay complainant permanent total disability benefit in the amount of US\$60,000.00 plus ten percent (10%) thereof as attorney's fees, or in the total amount of US\$66,000.00.

All other claims are dismissed for lack of merit.

**SO ORDERED.**<sup>[15]</sup>

Aggrieved, the petitioners filed a petition for *certiorari* with the CA,<sup>[16]</sup> asserting that the NLRC should have considered the final assessment which was made in accordance with the Schedule of Disability Impediment provided for in Section 32 of the POEA-SEC and issued within the 240-day period. They also challenged the award of attorney's fees amounting to \$6,000.00 on the ground that it could only be given when the circumstances warrant the same. In Zafra's case, the petitioners opined that there was no basis for the said award.

Zafra, on the other hand, cited *Abante v. KJS Fleet Management Manila*,<sup>[17]</sup> where it was ruled that the failure of the company-designated physician to pronounce the petitioner fit to work within the 120-day period entitled him to permanent total disability benefits in the amount of \$60,000.00. He further claimed that the medical certificates with assessment or grading issued within the 240-day period and presented by the petitioners were belatedly manufactured to remedy the obvious flaws in their legal position.

In its June 4, 2012 Decision, the CA *affirmed*<sup>[18]</sup> the NLRC decision. According to the CA, the test of whether or not an employee suffered from permanent total disability was a showing of the capacity of the employee to continue performing his work, notwithstanding the disability incurred. Thus, if by reason of the injury or sickness sustained, the employee was unable to perform his customary job for more than 120 days and he did not come within the coverage of Rule X of the Amended Rules on Employees Compensability, then the said employee undoubtedly suffered from permanent total disability regardless of whether or not he lost the use of any part of his body. Even if the 120-day period could be extended to 240 days, the employer must make a declaration within the same period, otherwise, characterizing the injury as permanent and total would become inevitable.

Accordingly, the CA took note of the fact that Zafra had not been able to work for more than 240 days from his repatriation by reason of his injuries without the petitioners issuing any certificate attesting to his fitness to work or any declaration of permanent disability. It considered the assessment valueless because no declaration of fitness to work or any degree of Zafra's permanent disability was made.

The petitioners moved for reconsideration, but their motion was denied in the CA resolution, dated December 7, 2012.

Hence, this petition.

## **GROUND FOR ALLOWANCE OF THE PETITION**

### **I**

**THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT DISMISSED THE PETITIONER'S CERTIORARI, IN THAT:**

**THE COURT OF APPEALS FAILED TO APPLY THE PROVISIONS OF THE POEA-SEC AND THE RECENT SUPREME COURT DECISIONS WHEN IT AFFIRMED THE NLRC'S AWARD OF PERMANENT DISABILITY BENEFITS TO THE PRIVATE RESPONDENT DESPITE THE LATTER'S PARTIAL DISABILITY ASSESSMENT OF 20% OF GRADE 10 ON THE SOLE BASIS OF THE PRIVATE RESPONDENT'S ALLEGATION THAT INCAPACITY FOR MORE THAN 120 DAYS HAS AUTOMATICALLY RENDERED HIM PERMANENTLY UNFIT FOR SEA DUTIES.**

**THE COURT OF APPEALS FAILED TO CONSIDER THAT THE PRIVATE RESPONDENT HAS NOT PRESENTED ANY MEDICAL EVIDENCE WHICH WOULD SHOW THAT HE IS INDEED SUFFERING A PERMANENT AND TOTAL DISABILITY WHICH WOULD ENTITLE HIM TO US\$60,000.**

### **II**

**THE COURT OF APPEALS GRAVELY ERRED IN AWARDING THE PRIVATE RESPONDENT ATTORNEY'S FEES.<sup>[19]</sup>**

Petitioners are of the position that the CA erred in affirming the NLRC decision for the following reasons:

1. The CA should not have based the disability compensation on the basis of the number of days a seafarer failed to resume work but on the gradings mentioned in the Schedule of Disability Allowances. The Labor Code provision on disability is not applicable as it is the POEA-SEC that governs the relationship of the parties in this case. Under the POEA-SEC, the injury that a seafarer may have suffered is compensated on the basis of the schedule provided. Accordingly, Zafra should only be entitled to receive the benefit corresponding to Grade 10 disability as assessed by the company-designated physician. It cited *Fernandez v. Great Southern Maritime Services, Inc.*,<sup>[20]</sup> where this Court affirmed a CA rule that a seafarer's argument that his incapacity to work automatically entitled him to full disability benefits was without merit. The petitioners submit that if it were otherwise, the Schedule of Disability Allowance under the POEA-SEC would be rendered absurd and meaningless.

2. The CA also erred when it automatically declared Zafra as permanently

and totally disabled after the 120-day period lapsed without any certificate of fit to work being issued. Citing *Vergara v. Hammonia Maritime Services Inc.*<sup>[21]</sup> and *Crystal Shipping v. Natividad*,<sup>[22]</sup> the petitioners would want this Court to apply the rule that even if the seafarer has not been assessed within the 120-day period, this does not automatically make him permanently and totally disabled. Considering that there are injuries that cannot be assessed or treated within the 120-day period, the period may be extended up to the maximum of 240 days if the condition of the seafarer requires further medical attention. Thus, an injury only becomes permanent and total if within the 240-day period, the company-designated physician makes such a declaration after the lapse of the said period, no declaration to that effect was made. In this case, Zafra was assessed with a Grade 10 disability within the 240 day period and, as such, he should have been declared partially disabled, instead of declaring him with permanent and total disability.

3. The CA also erred in concluding that because Zafra was not furnished a copy of the final assessment, the same was of no value. They argue that nowhere in the POEA-SEC or jurisprudence does it state that the medical reports issued by the company-designated doctor are of no value if a copy thereof was not sent to the seafarer.

In sum, the petitioners are of the position that Zafra should have been declared by the CA as partially disabled with a Grade 10 disability and entitled to US\$3,590.73 only.

#### *Respondent's Position*

In his *Comment*,<sup>[23]</sup> Zafra contended that his entitlement to full disability benefits was in accord with the following facts:

1. The petitioners did not declare his fitness to work or the existence of his permanent disability within the 240-day period.
2. The petitioners' medical records of his condition have shown to have remained the same from the time he sustained his injury until August 20, 2010.
3. He remains unemployed from the time of his repatriation and is unable to perform the same physical activities he was able to do prior to his injury.

Accordingly, Zafra prays for the Court's affirmation of his permanent total disability and the right to receive the corresponding full disability benefits.

#### **Ruling of the Court**

The Court denies the petition.

There is no dispute that Zafra has been suffering permanent disability because he has remained unable to resume sea duties after the lapse of the 240-day period. The dispute is simply whether such permanent disability is partial or total in