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FIRST DIVISION

[G.R. No. 212049, July 15, 2015]

MAGSAYSAY MARITIME CORPORATION, PRINCESS CRUISE LINES, MARLON R. ROÑO AND "STAR PRINCESS," PETITIONERS, VS. ROMEO V. PANOGALINOG, 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 October 25, 2013 and the Resolution[3] dated April 7, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 126368, which reversed and set aside the Decision[4] dated December 15, 2011 and the Resolution[5] dated June 27, 2012 of the National Labor Relations Commission (NLRC) in NLRC NCR CN. OFW (M)-10-14690-10 denying respondent Romeo V. Panogalinog's (respondent) claim for permanent total disability benefits.

The Facts

Respondent was employed by petitioner Magsaysay Maritime Corporation (MMC) for its foreign principal, Princess Cruise Lines, Ltd. (PCL) as Mechanical Fitter on board the vessel "Star Princess" under a ten (10) month contract[6] that commenced on December 18, 2009, with a basic salary of US$508.00 per month, exclusive of overtime and other benefits.[7]

On April 27, 2010, respondent suffered injuries when he hit his right elbow and forearm on a sewage pipe during a maintenance work conducted on board the vessel. He was immediately provided medical treatment at the ship's clinic and was diagnosed by the ship doctor with "Lateral Epicondylitis, Right". However, despite treatment, his condition did not improve. Hence, he was medically repatriated on May 9, 2010.[8]

On May 14, 2010, the company-designated physicians also diagnosed respondent with "Lateral Epicondylitis, Right" and, thus, the latter was advised to undergo physical therapy. On June 2, 2010, Dr. Robert Lim (Dr. Lim), the company-designated doctor, found that "[p]atient claims almost resolution of both lateral elbow paid, decreased pain on the right wrist, slight limitation of motion of the right wrist, fair grip." On June 23, 2010, another medical bulletin was issued by Dr. Lim stating that "[p]atient claims improvement with physical therapy." On September 15, 2010, Dr. William Chuasuan, Jr. (Dr. Chuasuan), also a company-designated physician, issued a medical report stating that respondent was fit to return to work.[9]

After the company-designated physicians declared him fit to work, respondent

sought the services of an independent physician, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto), who, on the other hand, found him "physically unfit to go back to work"[10] as declared in a medical certificate dated October 13, 2010.[11]

On even date, respondent filed a complaint[12] for the payment of permanent total disability compensation in accordance with the parties' collective bargaining agreement (CBA), medical expenses, moral and exemplary damages, and other benefits provided by law and the CBA against MMC, its President, Marlon R. Rofio, and its foreign principal, PCL (petitioners), before the Labor Arbiter (LA), docketed as NLRC RAB No. NCR Case No. (M) NCR-10-14690-10.

In his Position Paper,[13] respondent averred that he was unfit to perform his job for more than 120 days, and that his injuries in his right elbow and forearm were never resolved and in fact, deteriorated despite medical treatment.[14] And since by reason thereof he had lost his capacity to obtain further sea employment and an opportunity to earn an income, respondent sought for the payment of permanent total disability compensation in the amount of US$80,000.00 pursuant to the CBA that was enforced during his last employment contract. He also sought for the payment of moral and exemplary damages in view of petitioners' unjustified refusal to settle the matter under the CBA and their evident bad faith in dealing with him, as well as attorney's fees for having been compelled to litigate.[15]

For their part, petitioners maintained that respondent is not entitled to the payment of permanent total disability benefits since he was declared fit to work by the company-designated physician. They further denied respondent's claims for moral and exemplary damages as they treated him fairly and in good faith. They likewise denied respondent's claim of attorney's fees for lack of basis.[16]

The LA Ruling

In a Decision[17] dated April 7, 2011, the LA ruled in favor of respondent, ordering petitioners to jointly and severally pay the former the sum of US$80,100.00, or its peso equivalent at the time of payment, as permanent total disability benefits, as well as moral and exemplary damages in the amount of P50,000.00 each.

The LA held that since the treatment of respondent's work related injury and declaration of fitness to work exceeded the 120-day period under the POEA Standard Employment Contract (POEA-SEC), and considering further that he was not anymore rehired, respondent was entitled to permanent total disability benefits in accordance with the CBA. Moral and exemplary damages were equally awarded for petitioners' refusal to pay respondent's just claim, which constitutes evident bad faith.

However, the LA denied respondent's other money claims due to his failure to sufficiently state in his complaint the ultimate facts on which the same were based.

Aggrieved, petitioners filed an appeal[18] to the NLRC.

The NLRC Ruling

In a Decision[19] dated December 15, 2011, the NLRC reversed and set aside the appealed LA decision and instead, dismissed respondent's complaint.

It held that the medical certificate of the independent physician, Dr. Jacinto, in support of respondent's claim for permanent total disability benefits cannot prevail over the medical reports of the company-designated physicians who actually treated him. It added that respondent's injury had clearly healed, considering that he admittedly signed the certificate of fitness to work, adding too that his doubts about his true medical condition at the time he was promised redeployment was not proof that he was merely forced to sign the same.[20]

Respondent moved for reconsideration,[21] but was denied in a Resolution[22] dated June 27, 2012, prompting the filing of a petition for *certiorari*[23] before the CA.

The CA Ruling

In a Decision[24] dated October 25, 2013, the CA granted the *certiorari* petition and reinstated the LA's Decision dated April 7, 2011.

It ruled that respondent was entitled to full permanent total disability benefits, considering that a period of more than 120 days had elapsed before the company-designated physicians made their findings, and that respondent was no longer redeployed by petitioners despite the finding of fitness to work by the company-designated physicians. In this relation, it further observed that the award of said benefits was not based on the findings of respondent's physician but rather on the number of days that he has been unfit to work.

Dissatisfied, petitioners filed a motion for reconsideration[25] which was, however, denied in a Resolution[26] dated April 7, 2014; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed grave error in awarding respondent permanent total disability benefits.

The Court's Ruling

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner 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.[27]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or

that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[28]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting respondent's *certiorari* petition since the NLRC did not gravely abuse its discretion in dismissing the complaint for permanent total disability benefits for respondent's failure to establish his claim through substantial evidence.

It is doctrinal that the entitlement of seamen on overseas work to disability benefits is a matter governed not only by medical findings but by law and by contract.[29] The relevant legal provisions are Articles 191 to 193 of the Labor Code and Section 2, Rule X of the Amended Rules on Employees' Compensation (AREC), while the relevant contracts are the POEA Standard Employment Contract (POEA-SEC), the parties' Collective Bargaining Agreement (CBA), if any, and the employment agreement between the seafarer and employer.

In this case, the parties entered into a contract of employment in accordance with the POEA-SEC which, as borne from the records, was covered by an overriding International Transport Workers' Federation (ITF) Cruise Ship Model Agreement For Catering Personnel, *i.e.*, the CBA, that was effective from January 1, 2010 until December 31, 2010.[30] Since respondent's injury on board the vessel "Star Princess" that caused his eventual repatriation was sustained on April 27, 2010, or during the effectivity of the CBA, his claim for the payment of permanent total disability compensation shall be governed by Article 12 (2) of the CBA which provides:

> 2. Disability:
>
> A Seafarer who suffers injury as a result of an accident from any cause whatsoever whilst in the employment of the Owners/Company, regardless of fault, including accidents occurring whilst traveling to or from the Ship and whose ability to work is reduced as a result thereof, shall in addition to his sick pay, be entitled to compensation according to the provisions of this Agreement.
>
> The compensation which the Owner/Company, Manager, Manning Agent, and any other legal entity substantially connected with the vessel shall be jointly and severally liable to pay shall be calculated by reference to an agreed medical report, with the Owners/Company and the Seafarer both able to commission their own and when there is disagreement the parties to this Agreement shall appoint a third doctor whose findings shall be binding on all parties. The aforesaid medical report determines the Degree of Disability and the table below the Rate of Compensation.
>
> x x x x
>
> Regardless of the degree of disability an injury or illness which results in loss of profession will entitle the Seafarer to the full amount of compensation, USD eighty-thousand (80,000) for Ratings (Group B, C & D) and USD one-hundred-and-twenty-thousand (120,000) for Officers (Group A). For the purposes of this Article, loss of profession means

> when the physical condition of the Seafarer prevents a return to sea service, under applicable national and international standards and/or when it is otherwise clear that the Seafarer's condition will adversely prevent the Seafarer's future of comparable employment on board ships. [31]

Based on the afore-cited provision, a seafarer shall be entitled to the payment of the full amount of disability compensation **only if his injury, regardless of the degree of disability, results in loss of profession**, *i.e.*, his physical condition prevents a return to sea service. Based on the submissions of the parties, this contractual attribution refers to permanent total disability compensation as known in labor law. Thus, the Court examines the presence of such disability in this case.

Preliminarily, the task of assessing the seaman's disability or fitness to work is entrusted to the company-designated physician. Section 20 (B) (3) of the 2000 POEA-SEC states:

> SECTION 20. COMPENSATION AND BENEFITS
>
> x x x x
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> x x x x
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> **For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**
>
> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.** (Emphases supplied)

Under the Labor Code, there are three kinds of disability, namely: (1) temporary total disability; (2) permanent total disability; and (3) permanent partial disability. Section 2, Rule VII of the AREC differentiates the disabilities as follows:

> SEC. 2. Disability - (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful