767 Phil. 338

THIRD DIVISION

[G.R. No. 190984, August 19, 2015]

ACOMARIT ACOMARIT LIMITED, PHILS., AND/OR HONGKONG PETITIONERS, VS. GOMER L. DOTIMAS, RESPONDENT.

D E C I S I O N

PERALTA, J.:

For the Court's resolution is a petition for review on *certiorari*, dated March 8, 2010, of petitioners Acomarit Phils. and/or Acomarit Hong Kong Limited, assailing the Decision[1] and Resolution,[2] dated December 12, 2008 and January 20, 2010, respectively, of the Court of Appeals (CA) reversing the Resolutions[3] dated September 30, 2003 and February 23, 2004 of the National Labor Relations Commission (*NLRC*) and ruling that respondent Gomer L. Dotimas suffered from permanent total disability thus entitling him to US$ 60, 000.00.

The antecedents follow:

Under a Contract of Employment dated October 27, 1999, respondent Gomer L. Dotimas was employed by ACOMARIT Phils. for its principal and ACOMARIT Hongkong, Limited as Able Seaman on board the vessel "M/V SAUDI RIYADH" for 10 months.[4] His Employment Contract[5] stated the following terms and conditions:

Duration of Contract	:	10 months
Position	:	Able Seaman
Basic Monthly Salary	:	US$ 410.00/mo.
Hours of work	:	44 hours/week
Overtime	:	US$ 228.00/mo. Fixed overtime 2.68/hour after 90 hours
Vacation leave with pay	:	6 days/mo.
Point of hire	:	Manila, Philippines

Respondent was issued a clean bill of health prior to being deployed after he underwent a medical examination required by the POEA and existing laws.[6]

On April 26, 2000, while on board and discharging his duties, respondent met an accident which injured his left leg. He was brought to the Rashid Hospital in Dubai where he was given first aid treatment.[7] Sometime in May 2000, respondent was repatriated for medical reasons.[8]

Petitioners referred respondent to its designated physician who recommended that his knee should be operated on.[9] Respondent underwent surgery known as Open Reduction and Fixation with Intramedullary Nails.[10] After a series of evaluations,

on September 21, 2000, Dr. Elenita Torres Supan, the attending physician, issued a final evaluation certificate wherein she categorically cleared respondent from his injury and allowed him to resume his work even with implants, which can be removed after a year and a half.[11]

On May 2, 2001, respondent, through counsel, wrote petitioners, claiming for full disability benefits amounting to US$60,000.00. He claimed that the injury suffered while working for petitioners "will not permit him to work again" as a Seaman which rendered him totally and permanently disabled.[12]

After his demand went unheeded, respondent filed on July 6, 2001 a Complaint for Disability Benefits and for Moral and Exemplary Damages plus attorney's fees alleging that:

1. he continues to suffer from the injury which caused his repatriation;
2. an independent physician had suggested a disability grade of 13 for his injury;
3. he is suffering from permanent medical unfitness which entitles him to at least US$3,360 up to a maximum of US$60,000; [and]
4. private respondents failed and unjustifiably refused to pay his disability benefits.[13]

Having failed to reach amicable settlement during the mandatory conference, the parties were directed to submit their respective position papers.

Respondent averred that under the provision of the Labor Code and Supreme Court doctrines, he is entitled to full disability benefits because his injury occurred during his 10-month contract and he is no longer fit for sea services as certified by an independent doctor, and has, as a result lost his earning capacity. He argued that the POEA Contract does not exclude or prohibit an independent physician from giving a disability grading and that the Labor Code concept of disability (loss or diminution of earning power) is not excluded in the interpretation of the provisions of the POEA Contract.[14]

Furthermore, respondent alleged that although he was pronounced fit to work, he can never be considered fit for employment if he still has implants on his leg since he can no longer carry heavy objects while on board a vessel. He claimed that the declaration of fit to work by the company designated physician was made out of bias.[15]

On the other hand, petitioners averred: that respondent is not entitled to any disability benefit as he was declared fit to work by the company designated physician; that his fit to work declaration negates his claims for disability benefits; that under the provisions of POEA Standard Employment Contract, respondent's disability can only be assessed by the companydesignated physician and such declaration binds the complainant; and, that the company-designated physician is the most qualified to determine the precise condition of respondent's health for having monitored and treated the complainant.[16]

In a Decision[17] dated January 28, 2003, the Labor Arbiter (*LA*) ruled in favor of the petitioners, the dispositive portion of which reads:

> WHEREFORE, premises considered, let the instant complaint be, as it is hereby ordered DISMISSED for lack of merit.
>
> SO ORDERED.[18]

In ruling that respondent is not entitled to disability benefits, the LA cited the case of *German Marine Agencies, Inc. vs. NLRC*[19] where the Court held that it is the company-designated physician who must proclaim that the seaman suffered a permanent disability whether total or partial due to either injury or illness during the term of the latter's employment, thus, the complainant's claim for permanent partial or permanent total disability must necessary fail.[20] The declaration of fitness issued by the physicians who attended to and periodically evaluated the respondent's condition soon after his repatriation from the vessel may not be outweighed by the certification of purported disability issued 10 months after the complainant was certified fit to resume employment.[21]

Respondent appealed before the NLRC, which affirmed the ruling of the LA and rendered its decision in favor of the petitioners, the dispositive portion of which states:

> WHEREFORE, premises considered, the appeal is hereby ordered DISMISSED for lack of merit and the assailed decision is hereby ordered AFFIRMED.
>
> SO ORDERED.[22]

In its decision, the NLRC noted that all the evaluation certificates issued by the company-designated physicians were all in order and not biased as to favor petitioners in their findings. The medical evaluation was periodically made and consistent with the diagnosis made on the complainant as with continuous improvement on his operated leg.[23]

Respondent filed a Motion for Reconsideration on October 31, 2003. However, the NLRC dismissed the motion for not finding any compelling reason to disturb the findings and conclusion thereon.[24]

Aggrieved, the respondent elevated the matters.to the CA via petition for *certiorari.* The CA reversed and set aside the twin Resolutions of the NLRC. The dispositive portion of the said decision reads:

> WHEREFORE, the instant Petition for Certiorari is GRANTED. The assailed twin Resolutions, dated September 30, 2003 and dated February 23, 2004, of the Public Respondent National Labor Relations Commission, in OFW (M) 01-071332-00, are hereby REVERSED and SET ASIDE.

> Accordingly, Private Respondents are held jointly and severally liable to pay Petitioner permanent total disability benefits of [US$ 60,000.00] at its peso equivalent at the time of actual payment and attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.
>
> Costs against private respondents.
>
> SO ORDERED.[25]

The subsequent motion for reconsideration filed by petitioners was denied in a Resolution dated January 20, 2010.

Hence, the petitioners filed before this Court the present petition raising the following issues:

> 1. Whether the Court of Appeals seriously erred in failing to abide by the express mandate of the governing POEA Contract and jurisprudence which provides that disability benefits are only given to seafarers who suffer disabilities. In this case, respondent was already declared "FIT TO WORK" by the company-designated physician;
>
> 2. Whether the Court of Appeals committed serious, reversible error of law in failing to consider that the findings of the company-designated physician are conclusive in accordance with the ruling of this Honorable Court in several cases; [and]
>
> 3. Whether the Court of Appeals committed serious, reversible error of law in not giving petitioners the opportunity to file any comment to respondent's Petition for *Certiorari*.[26]

This Court finds the present petition partly meritorious.

A cursory reading of the applicable contractual provisions and a judicious evaluation of the supporting evidence on records, lends strong credence to the contentions and arguments presented by petitioners.

Petitioners argued that the decision of the CA awarding disability benefits to respondent constitutes grave error and grave abuse of discretion for reason that respondent was already declared "FIT TO WORK" by the company-designated physician. Petitioners alleged that the declaration of fitness by the company-designated physician bars respondent's claim for disability benefits from prospering. [27]

Petitioners disagreed with the CA's ruling that respondent is suffering from total and permanent disability as he was purportedly unable to work for more than 120 days. [28] The CA concluded that as a result of his illness, respondent was clearly shown to be actually unfit to go back to his work as Able Seaman for at least five (5)

months or for more than 120 days.[29]

The CA held that respondent's inability to resume work for more than 120 days, by itself, already constituted permanent total disability. However, we have settled that a seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.[30]

While it may appear that under the POEA-SEC[31] and Labor Code[32] the 120-day period is non-extendible and the lapse thereof without the employer making any declaration would be enough to consider the employee permanently disabled, interpreting them in harmony with the Amended Rules on Employee Compensation (*AREC*)[33] indicates otherwise. That if the employer's failure to make a declaration on the fitness or disability of the seafarer is because of the latter's need for further medical attention, the period of temporary and total disability may be extended to a maximum of 240 days.[34]

We held in *Vergara v. Hammonia Maritime Services, Inc*.[35] that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability.[36]

In the *Vergara* case, this Court discussed the significance of the 120- day period as one when the seafarer is considered to be totally yet temporarily disabled, thus, entitling him to sickness wages. This is also the period given to the employer to determine whether the seafarer is fit for sea duty or permanently disabled and the degree of such disability.

Based on this Court's pronouncements, it is easily discernible that the 120-day or 240-day periods, and the obligations the law imposed on the employer are determinative of when a seafarer's cause. of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if:

(a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;
(b) 240 days had lapsed without any certification being issued by the company-designated physician;
(c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;
(d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he