769 Phil. 915

FIRST DIVISION

[G.R. No. 215551, September 16, 2015]

JAKERSON G. GARGALLO, PETITIONER, VS. DOHLE SEAFRONT CREWING (MANILA), INC., DOHLE MANNING AGENCIES, INC., AND MR. MAYRONILO B. PADIZ, RESPONDENTS.

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 June 10, 2014 and the Resolution[3] dated November 21, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 130266, which reversed and set aside the Resolutions dated March 25, 2013[4] and May 15, 2013[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000062-13/NLRC NCR No. 07-11019-12, and dismissed petitioner Jakerson G. Gargallo's (petitioner) claim for permanent total disability benefits.

The Facts

Petitioner was hired by respondent Dohle Seafront Crewing (Manila), Inc. (Dohle Seafront), in behalf of Dohle Manning Agencies, Inc. (Dohle Manning), as a wiper on board the vessel "MV WIDAR" with a basic monthly salary of $516.00. Prior to his deployment, petitioner underwent a pre-employment medical examination, and was declared fit to work. He then boarded the vessel on September 14, 2011.[6]

On February 28, 2012, while petitioner was lifting heavy loads of lube oil drum, the vessel rolled slightly, which triggered the drum to swing uncontrollably, and, in consequence, caused petitioner to lose his balance and fall on deck, with his left arm hitting the floor first, bearing his full body weight.[7] On March 8, 2012, petitioner was referred to a portside medical facility in Sauda, Norway where he was diagnosed and treated for "L72 BREAK IN [the] LOWER LEFT ARM," and later found to have a "RADIUS SHAFT FRACTURE OF THE LEFT [FOREARM]," which will require urgent corrective surgery. He was then referred to Haugesund Hospital for further examination, and likewise recommended for repatriation.[8]

Following his repatriation on March 11, 2012, petitioner was seen by the company-designated physician, Doctor Nicomedes G. Cruz, M.D. (Dr. Cruz), and was immediately confined at the Manila Doctors Hospital. As his x-ray showed that he had "comminuted displaced fracture of proximal third of the left radius,"[9] petitioner was referred to the company-designated orthopedic surgeon, Dr. Cirilo Tacata, M.D., who performed an Open Reduction and Internal Fixation surgery on him.[10] He was discharged on March 19, 2012,[11] but was on continued treatment as an out-patient[12] from March 22[13] to September 21, 2012.[14]

On September 21, 2012, petitioner returned to Dr. Cruz for his regular checkup. After medical evaluation, the latter issued a Medical Report[15] of even date declaring petitioner "fit to work."[16] Dissatisfied, petitioner consulted an independent doctor, Dr. Cesar H. Garcia (Dr. Garcia), who issued an Orthopedic Surgeon's Report[17] dated October 2, 2012, opining, instead, that he was unfit to work as a seaman as of that time.

Meanwhile, or on July 20, 2012, while still undergoing treatment with the company-designated physician, Dr. Cruz, and without having consulted the independent doctor, Dr. Garcia, petitioner filed a complaint[18] against respondents Dohle Manning, Dohle Seafront, and the latter's president, Mayronilo B. Padiz (Padiz; collectively, respondents), seeking to recover permanent total disability benefits pursuant to the *unsigned* International Transport Workers' Federation Standard Collective Agreement[19] (ITF CBA) dated January 1, 2012, as well as compensatory, moral and exemplary damages, and attorney's fees before the NLRC, National Capital Region (NCR), docketed as NLRC-NCR-OFW-Case No. (M) 07-11019-12.

In his Position Paper[20] dated October 5, 2012, petitioner claimed, *inter alia*, that he is entitled to permanent total disability benefits, considering that: (*a*) he has remained permanently unfit to perform further sea service despite major surgery and further treatment; (*b*) his permanent total unfitness to work was duly certified by his chosen physician, Dr. Garcia, whose certification prevails over the palpably self-serving and biased assessment of the company-designated physicians; and (*c*) his medical condition falls under the Permanent Medical Unfitness Clause[21] of the ITF CBA that entitles him to 100% compensation.[22]

For their part, respondents countered[23] that the fit to work findings of the company-designated physicians must prevail over that of petitioner's independent doctor, considering that: (a) they were the ones who continuously treated and monitored petitioner's medical condition;[24] and (b) petitioner failed to comply with the agreed procedure under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) on the joint appointment by the parties of a third doctor whose findings shall be considered as final with respect to the degree of his disability.[25] Respondents further averred that petitioner has no cause of action against them, and the filing of the disability claim was premature, since he was still undergoing medical treatment within the allowable 240-day period at the time of the filing of the complaint.[26]

The Labor Arbiter's Ruling

In a Decision[27] dated November 27, 2012, the Labor Arbiter (LA) ordered respondents, jointly and severally, to pay petitioner US$156,816.00 or its peso equivalent as permanent total disability benefits, plus ten percent (10%) thereof as attorney's fees.

The LA gave more credence to the medical report of petitioner's independent doctor, Dr. Garcia, which was based on his personal perception of petitioner's actual medical condition, as opposed to the medical report of the company-designated physician,

Dr. Cruz, who was not the physiatrist or the orthopedic surgeon who actually treated and monitored petitioner's injury.[28] The LA further held that since petitioner has suffered an injury on his left forearm and has undergone operation, said forearm is not as stable and strong as it was before the injury, and no business minded manning agency would accept him should he re-apply as seafarer.[29]

Aggrieved, respondents appealed[30] to the NLRC.[31]

The NLRC Ruling

In a Resolution[32] dated March 25, 2013, the NLRC affirmed the LA ruling, but reduced the award of disability benefits to US$125,000.00.

The NLRC doubted the credibility of the September 21, 2012 fit to work assessment of Dr. Cruz, considering the lack of finding as to whether the pain persistently felt by petitioner had subsided, gone, or persisted. On the other hand, the NLRC gave more credence to the October 2, 2012 Report of petitioner's independent doctor, noting that it described petitioner's range of motion to be with "[s] lightly limited pronation and suppination muscle strength = 70% of maximum strength,"[33] which could have been brought about by physical impossibility or by the subsisting pain felt by petitioner.[34]

While acknowledging that the inability to raise arm more than halfway from horizontal to perpendicular only has a disability grade of 11 or a 14.93% disability rating under Section 32, Shoulder and Arm, Item No. 12 of the 2000 POEA-SEC, the NLRC adjudged petitioner to 100% compensation at US$125,000.00,[35] pursuant to the provisions of the 2008-2011 ver.di IMEC IBF CBA[36] (IBF CBA) presented by respondents, which entitles any seafarer assessed at less than 50% disability to 100% compensation when certified as permanently unfit for further sea duties. It noted that the IBF CBA bore the signatures of the parties thereto, as opposed to the ITF CBA presented by petitioner that was not shown to have been duly adopted.[37]

Respondents moved for reconsideration[38] which was denied in a Resolution[39] dated May 15, 2013. Undeterred, they filed a petition for *certiorari*[40] before the CA.

While the *certiorari* petition was pending before the CA, the NLRC issued an entry of judgment[41] on July 1, 2013 and a writ of execution[42] on August 28, 2013 in the case, constraining respondents to settle the full judgment award.[43]

The CA Ruling

In a Decision[44] dated June 10, 2014, the CA granted respondents' *certiorari* petition and thereby dismissed petitioner's complaint for disability benefits.

The CA ruled that petitioner's claim for permanent total disability benefits was premature, considering that at the time of the filing of the complaint: (*a*) petitioner was still under medical treatment by the company-designated physicians; (*b*) no medical assessment has yet been issued by the company-designated physicians as

to his fitness or disability since the allowable 240-day treatment period during which he is considered under temporary total disability has not yet lapsed; and (*c*) petitioner has not yet consulted his own doctor, hence, had no sufficient basis to prove his incapacity.[45]

Moreover, the CA gave more credence to the fit to work assessment of the company-designated physician, Dr. Cruz, who treated and closely monitored petitioner's condition, over the contrary declaration of petitioner's independent doctor, Dr. Garcia, who attended to him only once, and in fact, merely limited himself to a review of petitioner's medical history and a reiteration of the diagnoses of the company-designated physicians, without conducting any medical or confirmatory tests or procedures to refute their findings.[46] It further noted that petitioner only sought Dr. Garcia's medical opinion two (2) months after the filing of the complaint,[47] and that the latter did not unequivocally state that petitioner was totally and permanently unfit to work, but only declared him unfit to work at that time, without giving any disability grading.[48]

The CA likewise deleted the award of attorney's fees, holding the same to be unwarranted in the absence of showing of bad faith and malice on the part of respondents.[49]

Undaunted, petitioner sought reconsideration,[50] which was, however, denied in a Resolution[51] dated November 21, 2014; hence, this petition.

The Issue Before the Court

The core issue in this case is whether or not the CA correctly ruled that the NLRC committed grave abuse of discretion in granting petitioner's claim for permanent total disability benefits.

The Court's Ruling

The petition lacks merit.

The entitlement of overseas seafarers to disability benefits is a matter governed, not only by medical findings, but also by law and contract.[52] The pertinent statutory provisions are Articles 197 to 199[53] (formerly Articles 191 to 193) of the Labor Code in relation to Section 2 (a),[54] Rule X of the Rules implementing Title II, Book IV of the said Code.[55] On the other hand, the relevant contracts are: (a) the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; (b) the CBA, if any; and (c) the employment agreement between the seafarer and his employer.[56] In this case, petitioner executed his employment contract with respondents during the effectivity of the 2010 POEA-SEC; hence, its provisions are applicable and should govern their relations, and not the 2000 POEA-SEC as held by the CA.[57]

Section 20 (A) of the 2010 POEA-SEC, which enumerates the duties of an employer to his employee who suffers a work-related injury or illness during the term of his

employment, pertinently provides:

> SECTION 20. COMPENSATION AND BENEFITS
>
> A. 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
>
> 2. x x x [I]f after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
>
> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days, x x x.
>
> x x x x
>
> 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. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. 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**.
>
> (Emphasis supplied)

In the recent case of *Ace Navigation Company v. Garcia,*[58] citing *Vergara v. Hammonia Maritime Services, Inc*.[59] (Vergara), the Court reiterated that the company-designated physician is given an additional 120 days, or a total of 240 days from repatriation, to provide the seafarer further treatment and, thereafter,