

SECOND DIVISION

[G.R. No. 215313, October 21, 2015]

OLIMPIO O. OLIDANA, PETITIONER, VS. JEBSENS MARITIME, INC., RESPONDENT.

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the September 3, 2014 Decision^[1] and the November 10, 2014 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 130988, which modified the May 28, 2013 Award^[3] of the Panel of Voluntary Arbitrators (VA), involving a claim for permanent and total disability benefits by a seafarer.

The Facts

Petitioner Olimpio O. Olidana (*Olidana*) was employed by respondents Jebsens Maritime, Inc. (*Jebsens*) as chief cook since 2007 under different employment contracts. As chief cook, Olidana was tasked to provision the ship, prepare its meals, take care and control of the refrigerated stores, clean the gallery, and maintain an inventory of catering and provisions.

Employee's Position

On March 22, 2011, Olidana again entered into an employment contract with Jebsens as chief cook of M/V Seoul Express for a duration of six (6) months. M/V Seoul Express was covered by the GIS Fleet Agreement Collective Bargaining Agreement (CBA) between the ITF London, Vereinte Dienstleistungsgewerkschaft and Hapag Lloyd AG, represented by Jebsens.

According to Olidana, sometime in September 2011, while he was cooking in the ship's kitchen, he accidentally bumped a kettle full of hot water injuring his left hand. He reported the matter to the vessel's master, who simply advised him to buy an ointment.

On October 8, 2011, while the vessel was docked at Ensanada, British Columbia, Olidana's medical condition manifested when he felt an acute pain and swelling on his left hand. He was brought to the clinic for a check up. There, he was diagnosed to be suffering from *Tendinitis* on his left hand, but he was allowed to go back to duty. His condition, however, worsened as his left hand became swollen with numbness of the fingers.

When the vessel docked at Yokohama, Japan, Olidana was brought to the nearest hospital for treatment where abscess of the left palm with infection of the whole hand was noted. Incision and drainage of abscess under local anesthesia was done

at the emergency room. He was then admitted to the hospital. He was discharged after a week and then repatriated to the Philippines on November 18, 2011.

Within three (3) working days from his arrival, Olidana reported to Jebsens and he was immediately referred to Shiphealth, Inc. for medical treatment. Olidana was placed under the care of Dr. Anna Pamella Lagrosa-Elbo (*Dr. Elbo*) and Dr. Maria Gracia K. Gutay (*Dr. Gutay*), the company-designated physicians.

On March 27, 2012, the company-designated physicians issued two separate reports. One report, titled "DISABILITY GRADING"^[4] (*disability report*), stated that:

Mr. Olidana is a diagnosed case of Central Space Abscess, Palmar Aspect of Left Hand s/p Incision and Drainage (October 27, 2011, Japan) s/p 30 session of Physical Therapy.

Based on POEA Contract of the HANDS, Section 32 No. 4, the closest classification that answers the condition of Mr. Olimpio Olidana is Loss of grasping power for small objects between the fold of the finger of one hand which is a **GRADE 10**.

Conversely, the other report, titled "11th and FINAL SUMMARY MEDICAL REPORT"^[5] (*final medical report*), recapped Olidana's medical history, the clinical course undertaken, and provided the following diagnosis and recommendations:

Diagnosis:

- Central Space Abscess, Palmar Aspect of Left Hand s/p Incision and Drainage (October 27, 2011, Japan)
- s/p 12 sessions of Physical Therapy
- s/p 10 sessions of Physical Therapy
- s/p 8 sessions of Physical Therapy

Recommendations:

- **NOT FIT FOR DUTY**
- CASE CLOSURE

Olidana asked Jebsens for his disability benefits, but the latter only offered him US \$10,000.00 based on the POEA Standard Employment Contract (*POEA-SEC*).

Olidana sought a second medical opinion from Dr. Renato P. Runas (*Dr. Runas*), the doctor of his choice. In a Medical Evaluation Report,^[6] dated August 14, 2012, Dr. Runas opined that Olidana had a permanent disability, to wit:

Seaman Olidana has a permanent disability affecting his left hand. The tendons of the affected 3 fingers are damaged by the massive palmar infection. Tendons are easily damaged and necrosed when surrounded by pus. Thus, the resulting flexion deformity of the fingers. Extended physiotherapy will not improve the finger movements. Scars and fibrous tissue also limit movements. The left hand function is totally lost. Since he works as Chief Cook he needs his hand in holding [food] and utensils during food preparations. With this impediment now affecting him, he is no longer expected to perform well in his job as a cook. He is physically

unfit to continue with his job as a seaman/cook or in whatever capacity with permanent disability.

The parties failed to settle their dispute in accordance with the arbitration clause in their CBA. Consequently, Olidana filed a complaint with the VA, docketed as AC-008-NCMB-NCR-97-09-11-12.

Employer's Position

For its part, Jebsens asserted that, on March 21, 2011, Olidana underwent the mandatory pre-employment medical examination (*PEME*) before boarding M/V Seoul Express. It claimed that Olidana did not disclose that he was suffering from *Diabetes Mellitus*. On October 27, 2011, Olidana was admitted to the Honmuko Hospital in Japan because of the pain he felt on his left hand. His wound, however, healed very slowly because of his *Diabetes Mellitus* and he was not taking any maintenance medication.

Jebsens argued that *Diabetes Mellitus* was a major risk factor in the development of Olidana's skin abscesses and was not work-related. Jebsens, nonetheless, shouldered Olidana's medical treatment out of pure humanitarian reasons, despite the concealment of his disease.

Accordingly, Olidana underwent meticulous medication and physical therapy sessions to address the injury on his left hand. Thus, on March 27, 2012, the company-designated physicians properly assessed his condition with a Grade 10 rating under Section 32 of the POEA-SEC. Jebsens offered Olidana the amount of US\$10,075.00 equivalent to his Grade 10 disability rating, but the latter unjustifiably rejected the same.

After the parties had filed their respective position papers, reply and rejoinder, the case was submitted to the VA for decision.

The VA Ruling

In an award, dated May 28, 2013, the VA ruled that Olidana was entitled to permanent total disability benefits under the loss of profession clause in their CBA. The VA opined that it was unlikely that Olidana could have concealed his *Diabetes Mellitus* because he had been working for Jebsens for five (5) years with constant medical examinations. Even assuming that Olidana concealed his *Diabetes Mellitus*, he was still entitled to disability benefits because such disease was not connected with *Tendinitis*.

The VA continued that Olidana suffered from a permanent total disability because he had not been employed since his medical repatriation on November 18, 2011. Also, the test of whether an employee suffered from a permanent total disability depended on the capacity of the employee to continue performing his work notwithstanding the disability incurred. Thus, if by reason of injury or illness, the employee was unable to perform his customary job for more than 120 days, then the said employee undoubtedly suffered from total permanent disability regardless of whether he loses the use of any part of his body. The dispositive portion reads:

WHEREFORE, award is hereby rendered ordering respondent Jebsens Maritime, Inc. and the principals it represent Hapag Lloyd to jointly and severally pay complainant his disability compensation benefit in the amount of US\$120,000.00 as provided by the parties existing Collective Bargaining Agreement (CBA) or its peso equivalent at the time of actual payment and ten (10%) percent of the total monetary award as and by way of attorney's fees.

All other claims are dismissed for lack of basis and merit.

SO ORDERED.

Aggrieved, Jebsens filed a petition for review before the CA.

The CA Ruling

In its assailed decision, dated September 3, 2014, the CA modified the award of the VA by reducing Olidana's disability benefits. At the outset, the CA agreed with the VA that Olidana's *Diabetes Mellitus* did not negate his claim for disability benefits. Notably, the said disease was never indicated in the company-designated physicians' diagnosis. What was specified in their medical reports was that Olidana suffered from Central Space Abscess, Palmar Aspect of Left Hand.

Yet, the CA held that Olidana's disease did not merit the award of total permanent disability benefits because he only suffered a Grade 10 impediment based on the company-designated physicians' disability report. The CA relied on *Splash Philippines, Inc., v. Ruizo*^[7] stating that the seafarer should be compensated in accordance with the schedule of benefits and governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

The CA gave more credence to the company-designated physicians' disability report over that of Dr. Runas' diagnosis, as the former's treatment was more extensive. Thus, the CA concluded that Olidana only had a Grade 10 disability and that he was entitled to US\$24,180.00 for the loss of grasping power for small objects between the fold of the finger of one hand. The decretal portion of the CA decision reads:

WHEREFORE, the petition is PARTLY GRANTED. The assailed Award of the Panel of Voluntary Arbitrators of the NCMB is MODIFIED such that Jebsens, together with its principal Hapag-Lloyd, shall be jointly and severally liable to pay Olidana disability compensation in the sum of US \$24,180.00 or its peso equivalent at the time of actual payment.

IT IS SO ORDERED.^[8]

Olidana filed a motion for reconsideration,^[9] dated September 18, 2014, arguing that the CA completely disregarded the company-designated physicians' final medical report recommending that he was not fit for duty, and that the final medical report prevailed over the disability report.

In its assailed resolution, dated November 10, 2014, the CA denied the motion for reconsideration. The CA opined that the company-designated physicians' two reports, both dated March 27, 2012, were consistent with each other because these

documents equally assessed Olidana's illness as Central Space Abscess, Palmar Aspect of Left Hand, which merited a Grade 10 disability rating.

Hence, this petition.

ISSUES

I.

WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT APPLY THE LOSS OF PROFESSION CLAUSE IN THE CBA.

II.

WHETHER THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN LAW WHEN IT RULED THAT THE PETITIONER IS ONLY ENTITLED TO [US\$24,180.00 AS DISABILITY BENEFITS].^[10]

In advocacy of his positions, Olidana argues that he is entitled to permanent and total disability benefits; that the meaning of disability does not completely depend on the company-designated physician's declaration but also on what the law says; that permanent disability is the inability of a worker to perform his job for more than 120 days, regardless whether he loses the use of any part of his body; and that considering that both the company-designated physicians and his doctor of choice confirmed that he was already unfit for duty, he is certainly entitled to permanent and total disability benefits.

In its Comment,^[11] Jebbens contended that Olidana's injury was not due to a work-related accident because it stemmed from his concealed *Diabetes Mellitus*; that a Grade 10 partial disability rating was proper because Olidana only suffered a loss of grasping power for small objects under Section 32 of the POEA-SEC; and that the 120-day rule was inapplicable because, under the 2010 POEA-SEC, the declaration of disability should no longer be based on the number of days the seafarer was treated, but on the disability grading provided.

In his Reply,^[12] Olidana stressed that his permanent disability had foreclosed any opportunity to acquire gainful employment as a seafarer. With his career as a seafarer finished, Olidana implored that his compensation should at least approximate his loss.

The Court's Ruling

The petition is impressed with merit.

The company-designated physicians issued conflicting medical reports

Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. Total disability, on the other hand, means the disablement of an employee to earn wages in the