

SECOND DIVISION

[G.R. No. 211638, October 07, 2015]

MARK ANTHONY SASO, PETITIONER, VS. 88 ACES MARITIME SERVICE, INC. AND/OR CARMENCITA A. SARREAL AND LIN WEN YU, RESPONDENTS.

RESOLUTION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*^[1] assails the September 18, 2013 Decision^[2] and March 5, 2014 Resolution^[3] of the Court of Appeals (CA) in CA-G.R.SP No. 124369.

Factual Antecedents

Petitioner Mark Anthony Saso (Saso) was engaged by respondent 88 Aces Maritime Services, Inc. (88 Aces) on behalf of its principal, respondent Lin Wen Yu (Lin Wen Yu), as a fisherman on board the latter's fishing vessel in Taiwan.

The employment was for a period of 24 months and with an agreed monthly salary of NT\$ 17,280.00. After completing the requirements for his deployment including the mandatory Pre-Employment Medical Examination (PEME) where he was declared "fit to work/fit for sea service", Saso left the Philippines on February 3, 2010.

Not long thereafter or on March 12, 2010, Saso figured in an accident on board the vessel. While in the process of hauling their catch, a hanging fishnet loaded with fish accidentally knocked him down. While still lying on the ground, the loaded fishnet and the huge rope holding it crashed into his right thigh thereby fracturing it. As a result, Saso had to be operated on twice in two different hospitals in Taiwan. He was thereafter repatriated and arrived in the country on April 20, 2010 in crutches.

On August 3, 2010, Saso filed before the Labor Arbiter (LA) a Complaint^[4] for Disability Benefits, Reimbursement of Medical Expenses, Sickness Allowance, Damages and Attorney's Fees against 88 Aces, its Managing Director, respondent Carmencita A. Sarreal, and Lin Wen Yu.

Ruling of the Labor Arbiter

In his pleadings,^[5] Saso claimed that upon his arrival in the Philippines, respondents already left him on his own. In fact, respondents did not even care to send somebody to fetch and assist him at the airport despite them being fully aware of his condition. Worse, when by his own initiative he presented himself to the office of 88 Aces on April 23, 2010, he was merely told that he should first shoulder the expenses for his continued medical treatment subject to reimbursement only upon proper documentation. Thus, he was constrained to spend for all his medical needs.

It was only on June 21, 2010 that respondents summoned him to report to their office for medical examination.^[6] In compliance, Saso presented himself to them on July 1, 2010 and was referred to by respondents to the company-designated physician, Dr. Rafael S. Recto (Dr. Recto) of the Manila Doctor's Hospital who examined him on even date.

Subsequent, or on August 3, 2010, Saso filed the said Complaint against On September 3, 2010, Saso was again seen by Dr. Recto who then issued a medical bulletin stating as follows:

Mr. Mark Anthony Saso was first seen last July 1, 2010 [f]or evaluation of an injury sustained while on board a ship. He had a comminuted fracture of his right femoral shaft when a heavy tackle fell on his right thigh. Treatments were done in Taiwan [wherein] two surgeries were done two weeks apart.

A dynamic intramedullary nail was placed with multiple [circlage] wires.

When seen, he was walking with a pair of crutches. His x-ray then showed callous formation. He has a shortening of one inch on the right leg. He was [advised] to undergo physical therapy to strengthen his thigh muscles.

He was seen again last September 3 x x x with new x-rays revealing further callous formation. He was also walking with full weight on his right lower extremity. He also complained of right sided back pain.

Examination showed a shortening of one inch on the right [leg] with weak quadriceps muscle.

He was [advised] to continue strengthening his quadriceps muscles and to put a shoe lift on the right. He was also told to strengthen back muscle with exercises.

He is presently walking without walking aides with a short leg limp on the right.^[7]

However, due to the fact that his right leg has not been restored to its normal condition and also that Dr. Recto failed to issue an assessment of his disability, Saso consulted Dr. Manuel Fidel M. Magtira (Dr. Magtira) of Casa Medica Inc. who, after examining him, issued a Medical Report^[8] dated September 8, 2010 which states in part, *viz.*:

This is the case of Mr. Mark Anthony M. Saso, a 24[-]year old male, resident of Phase I, Blk. 13, Lot 2, Eastwood Subd., San Isidro, Rodriguez, Rizal. He [complained of] pain on the right thigh. His present condition apparently started on March 12, 2010 when the [patient's right leg] was crushed by a load of fish in a net [causing] injury to his right

lower extremity while on board the ship. He was given emergency splinting and bandaging initially and was brought to a [h]ospital in Taiwan wherein X-ray was done. He was subjected to surgery wherein ORIF with M nailing was done. He was confined for ten days and was discharged [in an improved condition] but still in pain. On March 29, 2010, he was brought to another hospital in Taiwan wherein he [was] again x x x subjected to surgery [where] ORIF with circlage wiring and screw fixation [were done]. On April 20,2010, he was repatriated. On April 29,2010, he [consulte the] Philippine [Orthopedic] Center and was subjected to physiotherapy.

On physical examination the patient is fairly nourished, well[-]developed, on crutched ambulation. There is a presence of 12 inches incision scar on the lateral aspect of his right thigh. Atrophy of the thigh and calf muscle was noted. There [is a 1-cm] leg length discrepancy noted. There is limitation of motion of the right hip and knee. Numbness of the right lower extremities was noted.

Result of X-ray done in Marikina Valley Medical Center dated: 05/18/10

RIGHT FEMUR:

FINDINGS:

Orthopedic rod, screws and surgical wires are seen transfixing a comminuted fracture involving the proximal and middle 3rd of the right femur.

Moderate callus formation is documented.

Mr. Saso remains incapacitated. Despite his previous surgeries, he [continues to experience] pain on his right lower extremities. He walks with limitation. He [cannot] walk [without] the aid of x x x crutches. He has lost his pre[-]injury capacity and is UNFIT to work back at his previous occupation due to the said impairment. As he has lost his pre[-]injury capacity [,] he is partially and permanently disable with Grade 10 impediment based on [the] POEA contract.^[9]

For their part, respondents averred that after the accident they properly attended to all of Saso's medical needs while he was still in Taiwan; Saso came home to the Philippines with a companion, a certain Sonia Lianko, who upon arrival at the airport told him that they should proceed directly to 88 Aces for post-employment medical examination but the latter refused; Saso was summoned several times by respondents to present himself for post-employment medical examination but he failed to heed the same; and, despite such failure, respondents still accommodated Saso's request for reimbursement of medical expenses. In view of these, respondents argued that Saso is not entitled to his claims. Besides, per respondents' narration in their Position Paper,^[10] the company-designated physician already issued on September 23, 2010 an assessment of his disability as Impediment Grade 13.

In a Decision^[11] dated April 15, 2011, the LA ruled as follows:

When [Saso] was repatriated on April 20, 2010, it was expected as required by Section 20[B], paragraph 3 x x x that the company-designated physician must [assess] [his] disability or fitness to work but in no case shall the period exceed 120 days. [Saso] was repatriated on April 20, 2010 but until September 3, 2010, the company[-]designated physician failed to declare his assessment of [Saso's] disability or fitness to work, hi the premises, as ruled in

the case of Crystal Shipping, Inc. v. Deo Natividad, G.R. No. 154798, October 20, 2005, 473 SCRA 567, 568, [Saso] is already entitled to permanent total disability benefits, or the equivalent of US\$60,000.00. The Supreme Court, in particular held that:

Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. As gleaned from the records, respondent was unable to work from August 18, 1998 to February 22, 1999, at the least, or more than 120 days, due to his medical treatment. This clearly shows that his disability was permanent.

Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or [accustomed] to perform, or any kind of work which a person of his [mentality] and attainment could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather, it is the incapacity to work resulting in the impairment of one's earning capacity.

In the instant case, [Saso] was unable to perform his job as Fisherman since his repatriation on April 20, 2010 **until the filing of the complaint on September 17, 2010**, or for more than 120 days. In the case of Leopoldo Abante vs. KJGS Fleet Management Manila, et al., G.R. No. 182430, December 4, 2009, it has been held that 'given a seafarer's entitlement to permanent disability benefits when he is unable to work for more than 120 days, the failure of the company-designated physician to pronounce petitioner fit to work within the 120-day period entitled him to permanent total disability in the amount of US\$60,000.00.'

Regarding [Saso's] claim for sickness allowance, it appears from [his] reply that he was already paid an amount equivalent to his three (3) months['] salary, or for a period of only ninety (90) days. Thus, he is entitled to one (1) month salary, or the amount of NT\$ 17,280.00 to complete his sickness allowance equivalent to 120 days.

The claims for reimbursement of medical expenses and for moral and

exemplary damages, for lack of evidence must be denied.

Finally, [Saso] being represented by counsel in the instant suit, it is but just and [fair] that he is entitled to an award equivalent to ten percent (10%) of the total judgment award as and for attorney's fees.

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents] to pay jointly and solidarily [Saso] the sum of US\$60,000.00 as permanent total disability benefits, and NT\$7,280.00 as balance of his sickness allowance, plus ten percent (10%) of the foregoing judgment awards as and for attorney's fees.

All other claims of [Saso] are dismissed for lack of merit.

SO ORDERED.^[12]

Ruling of the National Labor Relations Commission (NLRC)

In their appeal, respondents pointed out, among others, that the Complaint was filed on August 3, 2010 and not on September 17, 2010 as stated by the LA in his Decision. Hence, from Saso's repatriation on April 20, 2010 up to the filing of the Complaint on August 3, 2010, the period of 120 days within which the company-designated physician must declare him fit to work or assess his disability had not yet lapsed. Respondents thus argued that the Complaint against them was prematurely filed. In any case, they asserted that Saso's failure to present himself for post-employment examination within three days from his repatriation negated his entitlement to the claimed benefits.

On December 20, 2011, the NLRC issued a Decision^[13] finding the appeal meritorious. It found that Saso failed to submit himself to post-employment examination within three days from his repatriation and this precluded him from claiming any compensation benefit. The NLRC also subscribed to respondents' observation that the Complaint was prematurely filed considering that the 120-day presumptive disability period, reckoned from Saso's arrival in the country on April 20, 2010, was yet to lapse on August 19, 2010 or after the Complaint was filed on August 3, 2010.

The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the assailed Decision is hereby reversed and set aside and a new one entered dismissing the complaint for lack of merit.

SO ORDERED.^[14]

Saso's Motion for Reconsideration^[15] thereto was denied by the NLRC in a Resolution^[16] dated February 17, 2012.

Ruling of the Court of Appeals