773 Phil. 428

SECOND DIVISION

[G.R. No. 215471, November 23, 2015]

MARLOW NAVIGATION PHILIPPINES INC., MARLOW NAVIGATION CO. LTD./ CYPRUS, LIGAYA C. DELA CRUZ AND ANTONIO GALVEZ, JR., PETITIONERS, VS. BRAULIO A. OSIAS, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the December 3, 2013 Decision[1] and the November 24, 2014 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 125554, which annulled and set aside the February 28, 2012 Decision[3] and the April 30, 2012 Resolution[4] of the National Labor Relations Commission (*NLRC*) in a case involving a claim for permanent and total disability benefits of a seafarer.

The Facts

Marlow Navigation Philippines, Inc. *(Marlow Navigation)* is a domestic corporation and local manning agency. On the other hand, petitioner Braulio Osias *(Osias)* was a chief cook in the container vessel of Marlow Navigation for seven (7) years.

On September 23, 2009, Osias entered in a contract of employment[5] with Marlow Navigation. He was to work as a chief cook on board M/V OOCL MUMBAI for a period of nine (9) months and earn a basic monthly salary of US$698.00. Thereafter, Osias boarded the vessel and commenced his work.

On February 12, 2010, while working in the gallery and preparing breakfast, Osias fainted and hit his head and shoulder on the garbage bin. There were no injuries found on him, but he experienced shivers. When the ship arrived in Virginia, U.S.A., he was treated by Dr. Kevin P. Murray and was advised to return home.

Accordingly, Osias was medically repatriated. He arrived in the Philippines on February 15, 2010 and immediately reported to Marlow Navigation. He was referred to the company-designated physician, Dr. Michael Tom J. Arago *(Dr. Arago)* of the Manila Doctor's Hospital *(MDH)*. On February 16, 2010, an x-ray examination[6] revealed that Osias was suffering from "degenerative osteoarthropathy of both knees." He was advised to undergo 10 sessions of physical therapy at the MDH Department of Rehabilitation Medicine and was prescribed medicines for his condition.

On March 31, 2010, Dr. Arago issued a medical report[7] stating that Osias was diagnosed with "left shoulder contusion, lumbar strain and osteoarthritis, right and

left knees." Osias was then required to undergo 10 more physical therapy sessions every Monday, Tuesday and Thursday, starting April 5, 2010. After four (4) physical therapy sessions, Osias suddenly failed to comply with his treatment without any previous notice.

On May 14, 2010, or more than a month after he last reported to the company-designated physician, Osias appeared for the continuation of his physical therapy. On even date, Dr. Arago issued another medical report[8] noting the prolonged absence of Osias. It was stated therein that Osias did not follow up his treatment because he went to La Union. Nevertheless, Dr. Arago continued Osias' therapy.

On July 14, 2010, Dr. Arago issued a final medical report[9] stating that Osias underwent physical capacity evaluation and that he was already "fit to return to work effective 13 July 2010." Further, a certification of fitness to work[10] was issued to Osias.

Unconvinced, Osias sought the medical opinion of Dr. Li-Ann Lara Orencia (*Dr. Orencia*). In her medical certificate, dated September 14, 2010, Dr. Orencia opined that the osteoarthritis of Osias would prevent him from returning to his former work as chief cook.

Consequently, Osias filed a complaint for permanent and total disability benefits, moral and exemplary damages, and attorney's fees against Marlow Navigation, Marlow Navigation Co. Ltd., and its officers Ligaya Dela Cruz and Antonio Galvez, Jr. (*petitioners*) before the Labor Arbiter *(LA)*.

In his position paper,[11] Osias asserted that his incapacity to work for more than 120 days entitled him to permanent and total disability benefits. Conversely, in their position paper,[12] petitioners countered that Osias was not entitled to the said benefits because the company-designated physician found and certified that he was fit to return to work. Moreover, he himself caused the delay in his treatment.

The LA Ruling

In its Decision,[13] dated May 2, 2011, the LA ruled that Osias was not entitled to permanent and total disability benefits. The LA gave weight to the findings of the company-designated physician because the latter had the authority to proclaim whether a seafarer suffered from a permanent and total disability, based on an extensive medical treatment. Further, the LA found that Osias was remiss in his obligation to promptly report to the company-designated physician because he went to his province in La Union and dispensed with his treatment. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the claim for disability benefits.
>
> All other claims are likewise denied for being bereft of merit.
>
> SO ORDERED.[14]

Aggrieved, Osias appealed the case before the NLRC.

The NLRC Ruling

In its Decision, dated February 28, 2012, the NLRC denied the appeal of Osias. The commission was of the view that the evaluation of the company-designated physician gained precedence over that of the seafarer's personal doctor who issued a belated medical opinion solely based on the prior findings of the company-designated physician and without conducting her own examination of Osias. Also, the NLRC added that if Osias only complied with the schedule of the physical therapy, then he could have been declared fit to work in less than 120 days. The decretal portion of the decision states:

> WHEREFORE, the Decision of the Labor Arbiter dated May 2, 2011 is AFFIRMED and the instant appeal is DISMISSED for lack of merit.
>
> SO ORDERED.[15]

Osias filed a motion for reconsideration, but the same was denied by the NLRC in its April 30, 2012 Resolution.

Undaunted, Osias filed a petition for *certiorari* before the CA.

The CA Ruling

In its assailed decision, dated December 3, 2013, the CA annulled and set aside the February 28, 2012 Decision and the April 30, 2012 Resolution of the NLRC. The CA found that from the time Osias was medically repatriated to the Philippines on February 16, 2010, it was only on July 14, 2010, or after a period of 147 days, that he was declared fit to work by the company-designated physician. As the said period was beyond the 120-day rule provided by law, the CA opined that he must be entitled to permanent and total disability benefits. The appellate court concluded that the medical examination conducted by the company-designated physician should not have extended beyond the 120-day period. The *fallo* of the decision reads:

> WHEREFORE, premises considered, the instant petition is GRANTED, and the assailed Decision dated February 28, 2012 and Resolution dated April 30, 2012 are hereby ANNULLED and SET ASIDE. Accordingly, respondents are ordered to jointly and severally pay petitioner Braulio Osias, the amount of US$60,000.00 representing his total disability benefits, plus attorney's fees of US$6,000.00, in Philippine currency, at the rate of exchange prevailing at the time of actual payment. All other claims are DISMISSED.
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> SO ORDERED.[16]

Petitioners moved for reconsideration, but their motion was denied by the CA in its

assailed resolution, dated November 24, 2014.

Hence, this petition raising the following

ISSUES

I.

THE COURT OF APPEALS GLARINGLY FAILED TO TAKE INTO CONSIDERATION THAT THE DELAY IN THE ISSUANCE OF THE ASSESSMENT OR CERTIFICATION OF FITNESS TO WORK BY THE COMPANY-DESIGNATED PHYSICIAN WAS DUE TO THE FAULT OF RESPONDENT. IN ANY EVENT, THE FACT THAT THE FITNESS TO WORK CERTIFICATION WAS ISSUED AFTER 147 DAYS FROM REPATRIATION OF RESPONDENT DOES NOT NECESSARILY RENDER HIM TOTALLY AND PERMANENTLY DISABLED. THE MERE LAPSE OF THE 120-DAY PERIOD OF INITIAL MEDICAL TREATMENT DOES NOT TANTAMOUNT TO PERMANENT DISABILITY BASED ON THE RECENT RULING OF THIS HONORABLE COURT.

II.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR WHEN IT UPHELD THE ASSESSMENT OF RESPONDENT'S OWN PERSONAL DOCTOR OVER THE CERTIFICATION OF FITNESS TO WORK ISSUED BY THE COMPANY-DESIGNATED PHYSICIAN. BOTH THE LOWER LABOR TRIBUNALS CATEGORICALLY FOUND THAT THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN WAS A RESULT OF A MORE ELABORATE EXAMINATION AND TREATMENT. ON THE CONTRARY, THE ONE (1) DAY EXAMINATION OF RESPONDENT'S PERSONAL DOCTOR WAS NOT SUPPORTED BY ANY MEDICAL EXAMINATION AS IT WAS MERELY BASED ON WHAT THE RESPONDENT SEAFARER RELAYED REGARDING HIS TREATMENT WITH THE COMPANY DOCTOR AND HIS COMPLAINT OF PAIN DURING THE SAID 1-DAY CONSULTATION WITH HIS PERSONAL DOCTOR.

III.

THE AWARD OF ATTORNEY'S FEES IS IMPROPER IN THIS CASE CONSIDERING THAT THERE WAS NO BAD FAITH ON THE PART OF PETITIONERS.[17]

Petitioners argue that the 120-day rule only applies when a seafarer's treatment went beyond such period without any assessment from the company-designated physician or when the delay in the issuance of the assessment was not due to the fault of the seafarer; that the 120-day rule should not operate in this case as the extended treatment of 147 days was due to Osias' absence; that the 240-day period should be applied because not all diseases of seafarers could be treated within 120 days; and that the findings of the company-designated physician should prevail as the said findings were based on extensive analysis and treatment.

Petitioners further pray for the issuance of a temporary restraining order and/or writ of preliminary injunction claiming that Osias filed a motion for issuance of a writ of execution before the LA and that the execution of the CA decision would cause grave injustice to them.

In his Comment,[18] Osias countered that the medical findings of Dr. Orencia was more reliable than the findings of company doctor, Dr. Arago, because he was still not well; that at present, he could barely walk and had not been engaged in any gainful employment from the time he was medically repatriated; and that jurisprudence declared that neither the 120-day nor the 240-day period was a categorical determinant of total and permanent disability.

In their Reply,[19] petitioners averred that Osias did not refute that the delay in the issuance of the certificate of fitness to work was due to his fault; and that the said certificate issued by Dr. Arago, the company-designated physician, should overcome the one-day assessment of Dr. Orencia, Osias' own doctor.

The Court's Ruling

The petition is meritorious.

Laws and jurisprudence
relating to the 120-day
and 240-day rule

As early as 1972, the Court has defined the term permanent and total disability in the case of *Marcelino v. Seven-Up Bottling Co. of the Phil*,[20] in this wise: "[permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for, or accustomed to perform, or any other kind of work which a person of his mentality and attainments could do."[21]

The present controversy involves the permanent and total disability claim of a specific type of laborer—a seafarer. The substantial rise in the demand for seafarers in the international labor market led to an increase of labor standards and relations issues, including claims for permanent and total disability benefits. To elucidate on the subject, particularly on the propriety and timeliness of a seafarer's entitlement to permanent and total disability benefits, a review of the relevant laws and recent jurisprudence is in order.

Article 192(c) (1) of the Labor Code, which defines permanent and total disability of laborers, provides that:

> ART. 192. Permanent Total Disability.
>
> xxx
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for **more than one**