

## SECOND DIVISION

[ G.R. No. 180343, July 09, 2014 ]

**BAHIA SHIPPING SERVICES, INC. AND FRED OLSEN CRUISE LINES LIMITED, PETITIONERS, VS. CRISANTE C. CONSTANTINO, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

We resolve this Petition for Review on *Certiorari*<sup>[1]</sup> assailing the February 26, 2007 decision<sup>[2]</sup> and September 28, 2007 resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 94260.

#### The Antecedents

On February 27, 2002, respondent Crisante C. Constantino (*Constantino*) entered into a nine-month contract of employment<sup>[4]</sup> as *utility* (at a basic monthly salary of US\$261.00) with petitioners Bahia Shipping, Services, Inc. and its principal, Fred Olsen Cruise Lines, Limited (petitioners), for the vessel M/S Braemar. The contract had been verified and approved by the Philippine Overseas Employment Administration (POEA). Constantino boarded the vessel on March 26, 2002.

Sometime in April 2002 while at work onboard the vessel, Constantino complained of low back pain radiating to his right thigh after allegedly lifting several pieces of heavy luggage. The ship doctor gave him medications and advised him to rest. When the vessel arrived at the Barbados, he was referred to a shore-based physician, orthopedic surgeon Dr. Jerry A.W. Thorne, for examination and magnetic resonance imaging (MRI). The MRI revealed mild to moderate desiccation of Constantino's lumbar intervertebral disc at L3L4, L4L5 and L5S1. Dr. Thorne diagnosed Constantino to be suffering from an ***acute exacerbation of a pre-existing lumbar disc syndrome*** and declared him unfit to work for 10 days.<sup>[5]</sup>

On April 25, 2002, Constantino was repatriated and referred to petitioners' physician, Dr. Robert D. Lim (*Dr. Lim*) of the Metropolitan Hospital, who placed him under the care of an orthopedic surgeon. Constantino underwent an excision biopsy of a mass in his right flank and was subjected to medication, treatment, rehabilitation and therapy for several months starting early May 2002<sup>[6]</sup> until October 2, 2002 when Dr. Lim issued a report<sup>[7]</sup> on his medical condition, stating that "patient is now asymptomatic." The orthopedic surgeon opined that "patient is now fit to work."<sup>[8]</sup> Accordingly, Dr. Lim pronounced Constantino fit to work as of October 2, 2002.<sup>[9]</sup> On the same day, Constantino accepted and concurred with a Certificate of Fitness for Work.<sup>[10]</sup>

Despite these developments, Constantino engaged the services of a lawyer to claim

disability compensation from the petitioners and, to explore a possible settlement with them.<sup>[11]</sup> On May 31, 2003, Constantino consulted a physician of his choice, Dr. Marciano Almeda (*Dr. Almeda*), an occupational medicine and orthopedics specialist. Dr. Almeda assessed Constantino to have suffered from **permanent partial disability with a Grade 11 impediment** under the POEA Standard Employment Contract (*POEA-SEC*) and declared him unfit for further sea duties.<sup>[12]</sup> The petitioners denied the claim, prompting Constantino to file on June 12, 2003 a complaint for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees against them.

Constantino alleged before the labor arbiter that despite the treatment given to him by the company-designated physicians, his ailment had not improved. He claimed that his back pain continued. He argued that he had a valid claim for disability benefits as he had been assessed by his physician of choice to have suffered from permanent partial disability with a declaration that he was unfit for sea duty. The certificate of fitness for work he executed, he emphasized, should have no effect on his claim because he only signed it after the petitioners assured him of re-deployment; since they failed to re-hire him, they cannot be released from any liability to him. He rejected Dr. Lim's medical report on his condition, particularly his **fit to work assessment**, as he considered it self-serving.

In defense, the petitioners argued that Constantino's claim should fail considering that immediately on his repatriation, he underwent regular and rigorous examination and was subjected to specialized treatments, tests and procedures, including surgery and therapy sessions, administered or supervised by its accredited doctors and specialists, at their expense. They stressed that for a period of almost six months, Constantino was seen by their doctors at least twelve (12) times, and on every occasion, the doctors issued a report on Constantino's medical condition, the particular treatment administered and medicines prescribed. Thus, when he executed the certificate of fitness for work on October 2, 2002, he is estopped, they argued, from questioning the findings of their accredited doctors.

### **The Compulsory Arbitration Rulings**

On October 14, 2003, Labor Arbiter Veneranda C. Guerrero (*LA Guerrero*) rendered a decision<sup>[13]</sup> dismissing the complaint for lack of merit. She held that Constantino is not entitled to disability benefits in view of the fit-to-work declaration by petitioners' coordinating physician Dr. Lim, after an exhaustive medical examination, treatment, surgical procedure and therapy sessions administered on Constantino for several months, as substantiated by the documents on record and corroborated by the certificate of fitness for work signed by Constantino.

LA Guerrero believed that except for their duty to provide him sickness wages during the period he was under treatment, the petitioners had complied with their obligations under the POEA-SEC with respect to the injury sustained by Constantino on board the vessel. LA Guerrero brushed off Constantino's allegation of bad faith against the petitioners for not re-deploying him as it was unsubstantiated and cannot overcome Dr. Lim's fit-to-work certification. LA Guerrero awarded Constantino sickness allowance for 120 days for failure of the petitioners to present proof that he had been paid. The labor arbiter likewise awarded him attorney's fees because he was compelled to file a complaint to enforce his rights.

Both parties appealed. Constantino insisted that he is entitled to permanent partial disability benefits based on Dr. Almeda's assessment of his medical condition arrived at with candor and sincerity compared with Dr. Lim's fit-to-work pronouncement which was issued so that petitioners could avoid liability. The petitioners, on the other hand, disputed the award to Constantino of sickness allowance and attorney's fees, presenting check vouchers as proof of payment<sup>[14]</sup> of the allowance. Also, they argued that Constantino was not entitled to attorney's fees because he should not have filed the complaint in the first place.

In its October 28, 2005 resolution,<sup>[15]</sup> the National Labor Relations Commission (NLRC), set aside the appealed decision and dismissed the complaint for lack of merit. It agreed with LA Guerrero's opinion that Dr. Lim's fit-to-work certification for Constantino should prevail over Dr. Almeda's medical report which merely interpreted the initial diagnosis of Dr. Lim. It set aside the sickness allowance award to Constantino in view of the proof of payment presented by the petitioners. Constantino moved for reconsideration, but the NLRC denied the motion, leaving him no option but to file a petition for *certiorari* with the CA, charging the NLRC with grave abuse of discretion for dismissing the complaint.

### **The CA Decision**

In its decision under review,<sup>[16]</sup> the CA partially granted the petition. It refused to give credit to the fit-to-work assessment issued to Constantino by Dr. Lim. The assessment, the CA stressed, was not based on Dr. Lim's own findings but on the opinion of an orthopedic surgeon (or other specialist) that Constantino was already fit to work, but whose medical report was not even shown by the petitioners. It dismissed Dr. Lim's medical report as "self-serving and biased in favor of the respondents," citing an earlier ruling of this Court<sup>[17]</sup> in support of its opinion.

The CA found the medical report of Dr. Almeda, Constantino's chosen physician, more credible as it was based on his own personal assessment of Constantino's ailment and he is more qualified than Dr. Lim, who is not a specialist in orthopedics. Further, the appellate court noted that even after Constantino was declared fit to work, he was still unable to work and neither was it shown that he was re-deployed or efforts were made by the petitioners to have him re-deployed. Additionally, it believed that Constantino's failure to perform his work for 120 days is another indicator that Constantino suffered from permanent disability.

The CA held that it cannot rely on the certification of fitness for work signed by Constantino to absolve petitioners from liability as it was in the nature of a quitclaim where it was not even shown that he received anything in signing the document. The CA sustained the denial of sickness allowance because Constantino had already been paid. It likewise denied his claim for damages for lack of basis. But the appellate upheld the grant of attorney's fees to him considering that he was compelled to litigate to enforce his rights. The petitioners moved for, but failed to secure, a reconsideration of the CA decision.

### **The Petition**

The petitioners are now before the Court to seek the reversal of the CA rulings on

grounds that the court gravely erred when it set aside the NLRC's denial of Constantino's claim for disability benefits and awarded him permanent partial disability compensation, plus attorney's fees. They submit that the evidence on record supports their position that Constantino is not entitled to his claim and, for this reason, he is likewise not entitled to attorney's fees.

They bewail the CA's reliance on Dr. Almeda's conclusion that Constantino suffered from a permanent partial disability with a Grade 11 impediment when he examined him only once and without any indication that the doctor subjected Constantino to any treatment at all. The petitioners decry the appellate court's refusal to give any weight to the evidence they submitted consisting of (1) medical reports which chronicled the medical management of Constantino's condition undertaken by their accredited doctors and, (2) the certificate of fitness for work executed by Constantino himself. They are at a loss, they submit, how the CA could have arrived at its sweeping conclusions.

On the award of attorney's fees, the petitioners maintain that the CA decision in favor of Constantino is not a sufficient reason for the award. They argue that their refusal to pay disability compensation to Constantino was based on sound medical advice and the provisions of the POEA-SEC. They believe their refusal to grant Constantino's disability claim cannot be said to be in bad faith as to entitle him to attorney's fees.

### **The Case for Constantino**

By way of his Comment<sup>[18]</sup> and Memorandum,<sup>[19]</sup> Constantino asks the Court that the petition be dismissed for lack of merit, contending that the CA correctly disregarded the fit-to-work declaration of Dr. Lim, the company-designated physician, because "he is not a specialist in the field of orthopedics and he is therefore not specially trained to examine and treat the respondent's injury;"<sup>[20]</sup> whereas, his chosen physician, Dr. Almeda, "is a specialist in occupational medicine and orthopedics and arthroscopic and ankle surgery x x x" and "is in a better position to examine and evaluate the injury of the respondent."<sup>[21]</sup> He adds that the company-designated physician does not have the exclusive authority to determine the disability of the seafarer as he is, "more often than not, bias (sic) in favor of their (sic) employer."<sup>[22]</sup>

Lastly, Constantino maintains that as he was unable to perform his customary work for more than five months or for more than 120 days (from April 25, 2002 when he was repatriated to October 2, 2002 when he was declared fit to work by Dr. Lim), he should be considered as suffering from permanent disability.

### **The Court's Ruling**

**We find the petition meritorious.**

**First.** The employment relationship between Constantino and the petitioners is governed by the POEA-SEC, otherwise known as the *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels*.<sup>[23]</sup> Thus, when the seafarer enters into an individual contract with the employer, as Constantino did in February 2002,<sup>[24]</sup> the **terms and conditions of**