743 Phil. 371

SECOND DIVISION

[G.R. No. 200566, September 17, 2014]

JEBSEN MARITIME INC., APEX MARITIME SHIP MANAGEMENT CO. LLC., AND/OR ESTANISLAO SANTIAGO, PETITIONERS, VS. WILFREDO E. RAVENA, RESPONDENT.

D E C I S I O N

BRION, J.:

The present petition for review on *certiorari*[1] resolves the challenge to the November 11, 2011 decision[2] and the February 9, 2012 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. Sp No. 113331.

The CA reversed and set aside the June 30, 2009 decision[4] of the National Labor Relations Commission *(NLRC)* in NLRC LAC No. (OFW-M) 07-000517-08 (NLRC NCR Case No. OFW-M 07-07815-07) which, in turn, reversed the May 26, 2008 decision[5] of the Labor Arbiter *(LA)*.

The LA granted in part the complaint filed by respondent Wilfredo E. ***Ravena*** for payment/reimbursement of salary for the unexpired portion of the contract, disability benefits, sickwage allowance, medical expenses, loss of earning capacity, damages and attorney's fees with legal interest.[6]

The Factual Antecedents

On **September 6, 2006**, Ravena entered into a ten-month contract of employment with petitioner ***Jebsen*** Maritime Inc. and its principal, Apex Maritime Ship Management Co., LLC. (collectively, the *petitioners*). Ravena was employed as 4th Engineer on board the vessel *"M/V Tate J"* with a basic monthly salary of US$859.00, exclusive of other benefits.[7] Ravena's contract was covered by the TCCC/IMEC IBF Collective Bargaining Agreement *(CBA)*.[8] Prior to the September 6, 2006 contract, Ravena previously worked for the petitioners from March 1, 2004 to August 11, 2006[9] in the same position.

Ravena subsequently submitted himself to the required pre-employment medical examination and was declared "fit to work;" he boarded *M/V Tate J* on **September 28, 2006**.

Sometime in May 2007, and while on board *M/V Tate J*, Ravena suffered extreme abdominal discomfort and pain, accompanied by chills, diarrhea, general feeling of weakness and muscle spasms. He was repatriated to the Philippines on **May 12, 2007**. Upon arrival, Ravena went directly to his hometown in Iloilo.

On May 15, 2007, Ravena went to the St. Paul's Hospital in Iloilo City. The doctors found a mass in his *ampullary* area and he underwent a series of tests.[10]

On **May 17, 2007**, he informed the petitioners that he had to undergo **Whipple** surgery. Ravena and the petitioners agreed that the former shall shoulder the medical expenses for the surgery, subject to reimbursement by the latter. Ravena underwent the surgery on May 21, 2007;[11] he was subsequently diagnosed to be suffering from *adenocarcinoma* or cancer of the *ampullary* area.[12]

On **June 18, 2007**, Ravena reported at Jebsen's office in Manila;[13] he was referred to Dr. Nicomedes ***Cruz***, a cancer surgeon and the company-designated physician. After examination and the review of Ravena's records and his illness, Dr. Cruz opined that Ravena's illness was not work-related.[14] The petitioners denied Ravena's claim for disability benefits. On July 23, 2007, Ravena filed his complaint for disability benefits with the LA.

The LA granted in part Ravena's complaint in the decision dated May 26, 2008.[15] She ordered the petitioners to pay Ravena the amount of US$125,000.00, as disability benefits, and US$12,500.00, as attorney's fees. She, however, denied Ravena's claim for medical reimbursement and sickness benefits as the petitioners had settled them in full.

In granting Ravena's claim for disability benefits, the LA ruled that Ravena did not need to establish causal

connection between his work and his illness. She pointed out that as 4th Engineer, Ravena was responsible for the operation, troubleshooting, repair and maintenance of shipboard engines and other machinery of the vessel. Ravena had to maintain a high degree of alertness at all times and was constantly exposed to different weather conditions.

The combination of physical, mental and emotional pressure and strain to which Ravena was exposed, led the LA to conclude that Ravena had increased his risk of contracting the illness. The LA thus further concluded that Ravena's illness was caused and aggravated by the conditions present in his job during his employment with the petitioners. To arrive at these conclusions, the LA gave weight to the St. Paul Hospital medical certificate that Ravena presented, over that of Dr. Cruz which he regarded as self-serving and biased.

The NLRC's ruling

In its June 30, 2009 decision,[16] the NLRC reversed and set aside the LA's judgment and dismissed Ravena's complaint for lack of merit.

According to the NLRC, Ravena failed to prove, by substantial evidence, that his illness was work-related, particularly in the light of the certification issued by Dr. Cruz that his illness - *adenocarcinoma* of the *ampullary* area - was not work-related. To the NLRC, aside from his bare allegations that "exposure to various substances over the years caused his disease," Ravena did not present any evidence to prove that indeed his illness was either work-related or work-aggravated. That he contracted the illness during his employment contract does not automatically translate to its work-relatedness.

The NLRC denied Ravena's motion for reconsideration[17] in its resolution dated January 18, 2010.[18] Ravena elevated the case to the CA *via* a petition for *certiorari*.[19]

The CA's ruling

In its November 11, 2011 decision,[20] the CA granted Ravena's petition; it reinstated the May 26, 2008 decision of the LA but reduced the disability benefit award from US$125,000.00 to US$60,000.00.

The CA agreed with the LA that to be entitled to disability benefits under the 2000 POEA-SEC, the seafarer only needs to show that his work and/or his working conditions contributed, even in a small degree, to the development or aggravation of his disease. In Ravena's case, he reasonably proved that his working conditions exposed him to factors that aggravated his medical condition. The CA pointed out that while the possible causes of his condition - cancer of the *ampullary* area which is a type of pancreatic cancer - are poorly understood, experts have advised that to prevent its growth, avoiding fatty foods and maintaining a well-balanced diet rich in fruits and vegetables help.

Relying on the Court's ruling in *Leonis Navigation Co., Inc. v. Villamater*,[21] the CA noted that in his Answer (to the petitioners' Memorandum on Appeal) and the Motion for Reconsideration before the NLRC, Ravena argued, among others, that the food on board *M/V Tate J*, consisted mainly of frozen red meat and processed food, all of which contributed to the risk of contracting or aggravating his illness. The petitioners never controverted this allegation. Although Ravena raised this argument only in the petitioners' appeal before the NLRC, it should have been and may still be properly admitted in the interest of substantial justice. Thus to the CA, while his *adenocarcinoma* of the *ampullary* area is a non-occupational disease per the POEA-SEC, Ravena is nevertheless entitled to full disability benefits.

The CA, however, noted that the records do not support the US$125,000.00 that the LA awarded as disability benefits; the AMOSUP/IMEC TCCC CBA for 2006-2007 submitted by the petitioners in fact support an award of only US$105,000.00. Examining the provisions of the CBA further, it pointed out that the disability compensation, per the CBA, is only available to a seafarer who "*suffers permanent disability as a result of work related illness or from an injury as a result of an accident*."

Based on this CBA provisions and the 2000 POEA-SEC which defines "work-related illness" as only those listed under its Section 32-A, the CA concluded that the CBA does not cover and does not consider as Ravena's *adenocarcinoma* or cancer of the *ampullary* area to be a compensable illness. Thus, the CA reduced the amount of the disability benefits that the LA awarded to US$60,000.00, following the schedule under the 2000 POEA-SEC.

The Petition

The petitioners maintain that Ravena failed to discharge the burden of proving, by substantial evidence, the

causal connection between the nature of his work and his illness or that the risk of contracting *adenocarcinoma* or cancer of the *ampullary* area was increased by his working conditions. They point out that, *first,* Ravena did not present any evidence that the food served on board M/V Tate J were high in fat and low in fiber, or assuming *arguendo* that the food served had indeed been of the high-fat-low-fiber kind, that they caused or aggravated his *ampullary* cancer.

Second, the cancer of the *ampullary* area that afflicts Ravena is not one of the illnesses Section 32 of the POEA-SEC considers as occupational disease.

Third, while actual or direct proof of causal connection between the working conditions and the seafarer's illness is not required, the award of disability benefits must still have sufficient basis. This sufficient basis is still required despite the disputable presumption that the POEA-SEC attaches to those illnesses not listed in Section 32. Working conditions cannot simply be presumed to have increased the risk of contracting the disease, absent any proof that links the seafarer's working conditions and his illness.

Fourth, Ravena did not report to them or to their designated physician within the three-day POEA-SEC mandated period for the post-employment medical examination.

And *fifth*, Court rulings had already settled that the opinion of the company-designated physician will prevail in the determination of the seafarer's disability in disability benefits claims. Ravena, notably, did not even present a contrary opinion from his chosen physician.

The Case for Ravena

Ravena counters, in his comment,[22] that he has successfully proven the existence of the causal connection between his illness and the working conditions on board *M/V Tate J*, or that his working conditions had, at the least, aggravated his illness. He argues that the conditions on board the vessel - exposure to chemicals, the demands of ship duties, and dietary provisions - directly caused or aggravated his illness. This conclusion, he points out, is in line with the various Court's rulings[23] that considered cancer as compensable illness. In fact, citing *Employees Compensation Commission v. Court of Appeals and Heirs of Abraham Cate*,[24] he argues that a disability benefits claimant is not even obliged to prove causal connection between the illness and his working conditions.

He additionally argues that under Section 20-B of the POEA-SEC, illnesses not otherwise listed as an occupational disease under Section 32-A are nevertheless disputably presumed to be work-related. The burden, therefore, lies on the petitioners to rebut this disputable presumption of work-relatedness. The petitioners, he points out, failed to discharge this burden as Dr. Cruz's certification is not sufficient to overcome this presumption. He adds that they did not even give any explanation or introduced medical evidence to support their position that *adenocarcinoma* or cancer of the *ampullary* area is not work-related.

At any rate, he points out that the POEA-SEC does not require that the company-physician first declare that the seafarer's illness is work-related for illness to be compensable. In fact, the courts are not even bound by the declaration from the company-designated physician, so as to automatically preclude the seafarer from claiming disability benefits.

Further, Ravena maintains that he is entitled to attorney's fees; the petitioners' fraudulent refusal to honor their contractual obligations forced him to seek the services of his counsel to vindicate his right.

Finally, he argues that the amount of disability award should be increased to US$110,000.00 as provided under the CBA that governs his employment contract.

The Court's Ruling

We find the petition meritorious.

Preliminary considerations: jurisdictional limitations of the Court's Rule 45 review of the CA's Rule 65 decision in labor cases

The petitioners essentially argue that the evidence on record do not support the findings and conclusions of the CA. Ravena, under the proven facts, the law and jurisprudence, is entitled to disability benefits.

This argument effectively raises factual issues — *i.e.,* whether Ravena's illness — *adenocarcinoma* or cancer of the *ampullary* area — is compensable and whether Ravena has complied with the POEA-SEC prescribed

procedures for determining Ravena's disability — that we cannot properly address in a Rule 45 petition for review on *certiorari.*

We emphasize that in a Rule 45 petition, we review the legal errors that the CA may have committed in its decision, not only the jurisdictional errors that we look out for in an original *certiorari* action.

In reviewing the legal correctness of the CA decision in a labor case under Rule 65 of the Rules of Court, we examine the CA decision in the context that it determined the presence or the absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision, on the merits of the case, was correct. Grave abuse of discretion means such capricious or whimsical exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. An act, to be struck down for grave abuse of discretion, must involve abuse that is patent or gross.

In other words, in the present Rule 45 petition, we proceed from the premise that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. Within this narrow scope of our Rule 45 review, the question that we ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[25]

Under these premises, we generally cannot address this petition's factual issues. We are, however, not unaware that under certain exceptional circumstances, the Court unavoidably has to delve into and resolve factual issues.

In situations where insufficient or insubstantial evidence have been adduced to support the findings under review, or when conclusions go beyond bare and incomplete facts submitted by the claimant, grave abuse of discretion may result and the Court is permitted to address factual issues. But, in this task, the Court's factual review power is exercised only to the extent necessary to determine *whether the CA correctly reversed for grave abuse of discretion the NLRC decision that dismissed Ravena's disability benefits claim for lack of merit.*[26]

We find the present petition to be one of the exceptional cases, to the extent that it reversed the NLRC's decision that we find to be fully in accord with the evidence, the law and the prevailing Court rulings, the CA committed reversible error that justifies the Court's exercise of its factual review power.

The provisions governing the seafarer's disability benefits claim

The entitlement of an overseas seafarer to disability benefits is governed by the law, the employment contract and the medical findings.[27]

By law, the seafarer's disability benefits claim is governed by Articles 191 to 193, Chapter VI (Disability benefits) of the Labor Code, in relation to Rule X, Section 2 of the Rules and Regulations Implementing the Labor Code.

By contract, it is governed by the employment contract which the seafarer and his employer/local manning agency executes prior to employment, and the applicable POEA-SEC that is deemed incorporated in the employment contract.[28]

Lastly, the medical findings of the company-designated physician, the seafarer's personal physician, and those of the mutually-agreed third physician, pursuant to the POEA-SEC, govern.

Pertinent to the resolution of this petition's factual issues of compensability (of *ampullary* cancer) and compliance (with the POEA-SEC prescribed procedures for disability determination) is Section 20-B of the 2000 POEA-SEC[29] (the governing POEA-SEC at the time the petitioners employed Ravena in 2006). It reads in part:

SECTION 20. COMPENSATION AND BENEFITS

x x x x

> B. 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. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or repatriated

   However, if 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. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage **until he is declared fit to work by the company-designated physician or the degree of permanent disability has been assessed by the company-designated physician** but in no case shall it exceed one hundred twenty (120) days.

   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. 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.

4. **Those illness not listed in Section 32 of this Contract are disputably presumed as work related.**

x x x x

6. In case of permanent total or partial disability of the seafarer caused either by injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. [Emphasis and underscoring supplied]

Ravena is not entitled to disability benefits;
he failed to comply with the prescribed procedures
and to prove the required connection or aggravation
between his illness and work conditions

As we pointed out above, Section 20-B of the POEA-SEC governs the compensation and benefits for the work-related injury or illness that a seafarer on board sea-going vessels may have suffered during the term of his employment contract. This section should be read together with Section 32-A of the POEA-SEC that enumerates the various diseases deemed occupational and therefore compensable. Thus, for a seafarer to be entitled to the compensation and benefits under Section 20-B, the disability causing illness or injury must be one of those listed under Section 32-A.

Of course, the law recognizes that under certain circumstances, certain diseases not otherwise considered as an occupational disease under the POEA-SEC may nevertheless have been caused or aggravated by the seafarer's working conditions. In these situations, the law recognizes the inherent paucity of the list and the difficulty, if not the outright improbability, of accounting for all the known and unknown diseases that may be associated with, caused or aggravated by such working conditions.

Hence, the POEA-SEC provides for a disputable presumption of work-relatedness for non-POEA-SEC-listed occupational disease and the resulting illness or injury which he may have suffered during the term of his employment contract.

This disputable presumption is made in the law to signify that the non-inclusion in the list of compensable