

## SECOND DIVISION

[ G.R. No. 195832, October 01, 2014 ]

**FORMERLY INC SHIPMANAGEMENT, INCORPORATED (NOW INC NAVIGATION CO. PHILIPPINES, INC.), REYNALDO M. RAMIREZ AND/OR INTERORIENT NAVIGATION CO., LTD./LIMASSOL, CYPRUS, PETITIONERS, VS. BENJAMIN I. ROSALES, RESPONDENT.**

### DECISION

**BRION, J.:**

We resolve the appeal of the decision<sup>[1]</sup> dated December 6, 2010 and the resolution dated February 24, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 107271. The appealed decision reversed the resolution dated November 21, 2008 of the National Labor Relations Commission (NLRC), and reinstated the June 26, 2007 decision of the Labor Arbiter (LA) finding Benjamin Rosales (*Rosales*) entitled to Grade 1 disability benefits.

#### **The Antecedent Facts**

On October 12, 2005, INC Shipmanagement Incorporated (*INC*, now known as INC Navigation Co., Philippines, Inc.), in behalf of its foreign principal (Interorient Shipping Co., Ltd.) hired Rosales for a period of ten (10) months as Chief Cook for the vessel *M/V Franklin Strait*. Their contract was pursuant to the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*). Rosales was to receive a monthly salary of Five Hundred Fifty United States dollars (US\$550.00). His primary function was to prepare, cook, and process food for the ship's officers and crew with the corresponding responsibility of maintaining the general cleanliness of the working area.<sup>[2]</sup>

Sometime in February 2006, while on board the vessel, Rosales experienced severe chest pain and breathing difficulties, coupled with numbness on his left arm. On February 13, 2006, a physician at Mount Sinai Medical Center in Miami, Florida, USA examined him. He underwent a coronary angiogram and also an angioplasty in the left anterior artery of his heart. All these were provided by the company at its own expense. Rosales was thereafter declared unfit to work and was advised to continue treatment in his home country.<sup>[3]</sup>

On February 20, 2006, after repatriation to the Philippines, Rosales was confined at the Manila Medical Center where the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz) examined him. Rosales was diagnosed to be suffering from acute myocardial infarction secondary to coronary artery disease, hypertension and diabetes mellitus.<sup>[4]</sup>

On April 7, 2006, Rosales consulted Dr. Paterno Dizon, Jr. (Dr. Dizon), an

interventional cardiologist at the Cardinal Santos Medical Center, who certified that he was suffering from coronary artery disease and severe stenosis in his heart. Consequently, he underwent a Coronary Artery By-Pass Graft Surgery at the Philippine Heart Center.<sup>[5]</sup>

On October 10, 2006, Dr. Cruz gave Rosales a partial permanent disability assessment equivalent to **Grade 7 (moderate residuals of disorder)** under the POEA-SEC. The assessment took into account the marked improvement of his condition.<sup>[6]</sup>

On November 9, 2006, Rosales sought the medical advice of Dr. Efren R. Vicaldo (*Dr. Vicaldo*), a cardiologist at the Philippine Heart Center for a second opinion. Dr. Vicaldo found him still suffering from hypertensive cardiovascular and coronary artery diseases in his heart. He assessed Rosales to be unfit to work as a seaman in any capacity and considered his illness to be work-related. He thus gave Rosales a permanent total disability rating of Grade 1 under the POEA-SEC.<sup>[7]</sup>

On the strength of Dr. Vicaldo's more favorable finding, Rosales claimed permanent total disability benefits from INC. The company denied the claim. Following the denial, Rosales filed a complaint<sup>[8]</sup> on December 7, 2006 for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees against INC before the Arbitration Branch of the NLRC.<sup>[9]</sup>

Rosales asserted that he is entitled to permanent total disability benefits under the POEA-SEC based on Dr. Vicaldo's Grade 1 disability rating; that this assessment is based on the finding that his illness was acquired in the performance of his duties, and that his illness rendered him unfit for sea duties. Rosales further stated that he was incapacitated to work for more than one hundred twenty (120) days. He also questioned Dr. Cruz's competency since Dr. Cruz did not actually perform the medical procedures, but based it only on the report of Dr. Dizon. Moreover, Rosales argued that Dr. Cruz is not a cardiologist but a general and cancer surgeon and who could not render an impartial assessment since he was a company-designated physician.<sup>[10]</sup>

For its part, INC emphasized that Dr. Cruz only gave a Grade 7 disability rating based on his post-treatment evaluation of Rosales; that under the POEA-SEC, it is the company-designated physician who is tasked to assess the fitness of a seafarer and to give the corresponding disability benefits rating. INC also pointed out that the award of disability benefits is not dependent on the impairment of the seafarer's earning capacity but on the gravity of the injury he had sustained.

### **The Compulsory Arbitration Decisions**

In his decision of June 26, 2007,<sup>[11]</sup> the LA found the complaint meritorious and ordered INC to pay Rosales Sixty Thousand United States dollars (US\$60,000.00) as **permanent total disability** benefits, plus three percent (3%) of this amount as attorney's fees.

The LA noted that Rosales is entitled to Grade 1 disability benefits because his illness prevented him from working for more than one hundred twenty (120) days

reckoned from the time he was repatriated in February 2006 until his disability rating was issued in October 2006.

INC appealed the ruling to the NLRC. The latter, in its resolution of January 4, 2008, affirmed the LA's decision. The NLRC, however, subsequently reversed its ruling.<sup>[12]</sup> It opined in this reversal that Rosales should only be entitled to a partial disability benefit amounting to Twenty Thousand United States dollars (US\$20,900.00) in accordance with Dr. Cruz' assessment.

The NLRC reasoned out that Dr. Cruz' assessment should prevail over Dr. Vicaldo's finding because Dr. Cruz, as the company-designated doctor, had thoroughly examined and had overseen the treatment of Rosales from the time of repatriation until the date of the issuance of his disability grading, while Dr. Vicaldo only attended to Rosales once on November 9, 2006.

Rosales challenged the NLRC ruling by filing with the CA a petition for certiorari under Rule 65 of the Rules of Court. He contended that the NLRC gravely abused its discretion in upholding the assessment of the company-designated physician and in finding that he is not entitled to full disability benefits.

### **The Assailed CA Decision**

The CA granted the petition in its decision of December 6, 2010,<sup>[13]</sup> thereby reinstating the LA's decision finding Rosales entitled to permanent total disability benefits. The appellate court found that from the time Rosales was repatriated until the disability grading was issued, a period of eight (8) months or more than one hundred twenty (120) days, had lapsed and Rosales had not been able to work during this period. The CA also considered that despite medical treatment, Dr. Cruz still found that Rosales' illness persisted; that this declaration, coupled with Rosales' two (2) major heart operations, should be more than sufficient to conclude that he could no longer perform his duties as Chief Cook. For this reason, Rosales' earning capacity was grossly impaired, warranting the award of Grade 1 permanent total disability benefits.

INC moved for reconsideration, but the CA denied the motion in its resolution of February 24, 2011;<sup>[14]</sup> hence, the petition.

### **The Issues**

INC raises the following assignment of errors:

#### **I.**

WHETHER OR NOT ROSALES IS ENTITLED TO FULL DISABILITY COMPENSATION BENEFITS BECAUSE HE WAS UNABLE TO WORK FOR ONE HUNDRED TWENTY (120) DAYS.

#### **II.**

WHETHER THE CA ERRED IN FINDING GRAVE ABUSE OF DISCRETION ON

THE PART OF THE NLRC IN FAVORING THE FINDINGS OF ROSALES' PHYSICIANS OVER THAT OF THE COMPANY-DESIGNATED PHYSICIAN.

INC primarily argues that the CA erred in finding that there had been grave abuse of discretion in the ruling of the NLRC; that (1) the disability is measured in terms of gradings, not by the number of days of actual inability to work; and (2) in a conflict of findings between the company-designated physician and the private physician, it is the company-designated physician's findings that should prevail.

**The Court's Ruling**

**We find the petition meritorious.** The CA gravely abused its discretion when it totally disregarded the governing contract between the parties – a situation that this Court cannot disregard without risking instability in maritime labor relations involving Filipino seamen.

***It is the doctor's findings which should prevail over the simple lapse of the 120-day period***

Article 192(c)(1) of the Labor Code provides that:

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(c) The following disabilities shall be deemed **total and permanent**:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, **except as otherwise provided in the Rules[.]** [Emphasis ours]

This provision should be read in relation with Rule X, Section 2 of the Rules and Regulations implementing Book IV of the Labor Code [Amended Rules on Employees' Compensation Commission],<sup>[15]</sup> and with Section 20(B)(3) of the POEA-SEC.<sup>[16]</sup> We had the occasion to explain the interplay of these provisions in *Vergara v. Hammonia Maritime Services, Inc., et al.*,<sup>[17]</sup> under these terms:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this

period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time if such declaration is justified by his medical condition. [Emphasis supplied]

The law and this pronouncement make it clear that INC is obligated to pay for the **treatment** of Rosales, plus his **basic wage**, during the 120-day period from repatriation while he is undergoing treatment; he could not work during this period and hence was on **temporary total** disability.

**Permanent disability** transpires when the **inability to work continues beyond one hundred twenty (120) days**, regardless of whether or not he loses the use of any part of his body. In comparison with the concept of permanent disability, **total disability** means the **incapacity of an employee to earn wages in the same or similar kind of work that he was trained for, or is accustomed to perform, or in any kind of work that a person of his mentality and attainments can do**. It does not mean absolute helplessness.

**In disability compensation, it is not the injury that is compensated; it is the incapacity to work resulting in the impairment of one's earning capacity.**<sup>[18]</sup>

Thus, while Rosales was entitled to **temporary total disability benefits** during his treatment period (because he could not totally work during this whole period), it does not follow that he should likewise be entitled to **permanent total disability** benefits when his disability was assessed by the company-designated physician after his treatment. He may be recognized to be have **permanent disability** because of **the period he was out of work and could not work** [in this case, more than one hundred twenty (120) days], but the extent of his disability (**whether total or partial**) is determined, not by the number of days that he could not work, but by the **disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages**.

It is the doctor's findings that should prevail as he/she is equipped with the proper discernment, knowledge, experience and expertise on what constitutes total or partial disability. His declaration serves as the basis for the degree of disability that can range anywhere from Grade 1 to Grade 14.<sup>[19]</sup> Notably, this is a serious consideration that cannot be determined by simply counting the number of treatment lapsed days.

In light of these distinctions, to confuse the concepts of **permanent** and **total** disability is to trigger a situation where disability would be determined by simply counting the duration of the seafarer's illness. This system would inevitably induce the unscrupulous to delay treatment for more than one hundred twenty (120) days to avail of the more favorable award of permanent total disability benefits.

***Non-referral to a third physician,  
whose decision shall be considered as final  
and binding, constitutes a breach of the  
POEA-SEC***

After establishing the importance of the physician's assessment of disability claims, the present case should have already been resolved had it not been for the