

## FIRST DIVISION

[ G.R. No. 204699, November 12, 2014 ]

**BAHIA SHIPPING SERVICES, INC., FRED OLSEN CRUISE LINE,  
AND MS. CYNTHIA C. MENDOZA, PETITIONERS, VS. JOEL P.  
HIPE, JR., RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Amended Decision<sup>[2]</sup> dated May 2, 2012 and the Resolution<sup>[3]</sup> dated December 3, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 115888 which reversed and set aside the Decision<sup>[4]</sup> dated March 17, 2010 and the Resolution<sup>[5]</sup> dated June 22, 2010 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. OFW(M) 02-02484-09 denying the claim for disability benefits of respondent Joel P. Hipe, Jr. (Hipe).

#### The Facts

Hipe had been continuously hired by petitioner Bahia Shipping Services, Inc. (Bahia) for its foreign principal, Fred Olsen Cruise Line (Olsen), and deployed to the latter's various vessels under seven (7) consecutive contracts. He was last employed by Bahia as plumber for the vessel M/S Braemar (vessel) under a six-month contract<sup>[6]</sup> commencing on the day of his embarkation on December 6, 2007, with a basic monthly salary of US\$708.00<sup>[7]</sup> exclusive of overtime and other benefits.<sup>[8]</sup>

Despite the lapse of the six-month contract on June 6, 2008,<sup>[9]</sup> Hipe continued to work aboard the vessel without any new contract. On June 22, 2008, in the course of the performance of his duties as plumber, he sustained a back injury while carrying heavy equipment for use in his plumbing job. He was advised to rest and perform only light jobs, and was given the assurance that he will be repatriated at the next convenient port. After one (1) month, however, he claimed that his condition worsened and, upon his request, he was repatriated to Manila on August 5, 2008.<sup>[10]</sup>

Upon Hipe's arrival, he was examined by the company-designated physician, Dr. Robert Lim (Dr. Lim). Results of the Magnetic Resonance Imaging revealed that he was suffering from "Lumbosacral Strain with right L5 Radiculopathy."<sup>[11]</sup> Thereafter, he was referred to an orthopedic surgeon and a psychiatrist for supervision and therapy.<sup>[12]</sup>

On October 2, 2008, Dr. Lim issued a medical assessment that "[Hipe] still has had considerable improvement with less pain and negligible tenderness at the lumbosacral area,"<sup>[13]</sup> and that, per advise of the attending orthopedic surgeon,

Hipe was to continue his rehabilitation and medications (Methycobal, Voltaren gel), and to return on October 9, 2008 "for re-evaluation and possible resumption of sea duties."<sup>[14]</sup> On the latter date, Hipe was declared fit to work,<sup>[15]</sup> and thus executed the corresponding Certificate of Fitness for Work.<sup>[16]</sup>

Subsequently, or on February 25, 2009,<sup>[17]</sup> Hipe, however, sought a second opinion from Dr. Venancio P. Garduce, Jr. (Dr. Garduce) of the UP-PGH Medical Center<sup>[18]</sup> who (a) opined that he was suffering from "+ Tenderness on low back area, + Straight leg raising test @ Associated with numbness and weakness of both lower extremities," (b) declared him unfit to work as seaman-plumber, and (c) assessed his disability rating at Grade 5.<sup>[19]</sup>

Thereafter, Hipe filed a complaint before the Labor Arbiter (LA) for the payment of permanent disability compensation, sick wages, reimbursement of medical and transportation expenses, moral and exemplary damages, and attorney's fees against Bahia, its President, Cynthia C. Mendoza, and its foreign principal, Olsen (respondents).<sup>[20]</sup>

In his Position Paper<sup>[21]</sup> dated March 25, 2009, Hipe averred that he: (a) sustained his injury on board the vessel during the course of his employment with Bahia;<sup>[22]</sup> (b) was assessed to be unfit to work as seaman-plumber with a disability classified as disability Grade 5 by Dr. Garduce, an independent, neutral, and impartial medical practitioner, whose findings must be given weight and credence over that of the company-designated physician;<sup>[23]</sup> (c) has been unfit for sea work beyond 120 days;<sup>[24]</sup> and (d) remained unemployed from the time of his medical repatriation on August 5, 2008.<sup>[25]</sup> Since he had lost his capacity to obtain further sea employment or resume sea duties, he therefore claimed entitlement to the following benefits<sup>[26]</sup> provided under the Total Crew Cost<sup>[27]</sup> Collective Bargaining Agreement (CBA): (a) maximum disability compensation of US\$89,100.00<sup>[28]</sup> regardless of the disability grading,<sup>[29]</sup> and (b) sick pay for 130 days at a rate equivalent to his US\$583.00 basic monthly salary.<sup>[30]</sup> Further, in view of respondents' unjustified withholding of the payment of his permanent disability benefits and sick wages and clear bad faith in their dealings with him, he sought the payment of moral and exemplary damages,<sup>[31]</sup> as well as attorney's fees for having been compelled to litigate.<sup>[32]</sup>

For their part, respondents claimed that Hipe is not entitled to the payment of salaries for the unexpired portion of the contract of three (3) months per year, permanent disability compensation, sick wages, and medical and transportation expenses because: (a) he was deployed back to the Philippines due to the termination of his contract and not for medical reasons;<sup>[33]</sup> (b) all the expenses appurtenant to his assessment and treatment/rehabilitation were shouldered by respondents;<sup>[34]</sup> (c) he was declared fit to resume sea duties and had executed/signed the corresponding Certificate of Fitness for Work,<sup>[35]</sup> agreeing thereto and releasing respondents from any liability concerning his medical condition.<sup>[36]</sup> Also, they posited that there lies no factual or legal basis justifying the award of moral and exemplary damages, and attorney's fees.<sup>[37]</sup>

## **The LA Ruling**

In a Decision<sup>[38]</sup> dated May 29, 2009, the LA ordered respondents to jointly and severally pay Hipe the sum of: (a) US\$89,100.00 as permanent disability benefits, as well as US\$2,915.00 as sickness allowance, to be paid in Philippine currency at the time of payment; (b) P200,000.00 as exemplary damages; (c) P200,000.00 as moral damages; and (d) attorney's fees equivalent to 10% of the total monetary award.<sup>[39]</sup>

The LA found that Hipe was medically repatriated as a consequence of an accident which transpired on board respondents' vessel during the course of his employment,<sup>[40]</sup> and that his injuries had caused him to be unfit for sea work permanently.<sup>[41]</sup> The LA gave more credence to Dr. Garduce's findings as being more reflective of Hipe's actual physical condition, compared to that of the company-designated physician which was "palpably self-serving and biased" in favor of respondents.<sup>[42]</sup>

Unconvinced, respondents filed an appeal<sup>[43]</sup> to the NLRC.

## **The NLRC Ruling**

In a Decision<sup>[44]</sup> dated March 17, 2010, the NLRC reversed and set aside the LA Ruling and dismissed Hipe's complaint for permanent disability compensation.

It found that Hipe was repatriated due to the expiration of his six-month employment contract, not for medical reasons, and that the delay in his repatriation was because the ship has not reached the port.<sup>[45]</sup> Corollarily, it found the CBA provisions on sick pay inapplicable.<sup>[46]</sup> Moreover, the NLRC observed that the averred CBA which contains essentially the same provisions as the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC) with regard to (a) the authority of the company-designated physician to assess a seafarer's disability, (b) the right of the seafarer to seek another opinion, and (c) the opinion from a third doctor jointly nominated by the parties whose assessment shall be final and binding, was not complied with by the parties in this case.<sup>[47]</sup> Accordingly, the NLRC held that the fit-to-work certification of the company-designated physician who has treated Hipe over a period of time should prevail over the finding of the latter's physician who has examined him only once.<sup>[48]</sup>

Hipe moved for reconsideration<sup>[49]</sup> which the NLRC, however, denied in a Resolution dated June 22, 2010, prompting the filing of a petition for *certiorari* before the CA.<sup>[50]</sup>

## **The CA Proceedings**

In a Decision<sup>[51]</sup> dated January 31, 2011, the CA dismissed the petition for *certiorari*, and thereby upheld the NLRC Ruling *in toto*. It fully subscribed to the findings of the NLRC that Hipe was repatriated due to the completion/expiration of his six-month employment contract, not for medical reasons, hence, effectively debunking Hipe's contention that he is entitled to permanent disability compensation. It found that Hipe remained in the ship two (2) months after the

completion of his employment contract because the ship has not reached any port and such fact should not be construed to mean that his contract was extended.<sup>[52]</sup>

Aggrieved, Hipe filed a motion for reconsideration,<sup>[53]</sup> alleging that the CA has misappreciated the facts and misinterpreted the applicable laws in not finding that (a) his original six-month employment contract was in fact extended, and (b) the injury sustained during such period was compensable.<sup>[54]</sup>

The CA resolved to hear the parties in an oral argument on the issue of whether or not Hipe was repatriated on account of injuries sustained while on board the vessel or on account of expiration of contract.<sup>[55]</sup> After the parties were heard and the required memoranda were filed, the CA issued an Amended Decision<sup>[56]</sup> dated May 2, 2012 setting aside its January 31, 2011 Decision and the NLRC's March 17, 2010 Decision and June 22, 2010 Resolution. In effect, the LA's May 29, 2009 Decision granting Hipe's claim for permanent disability compensation, sick wages, damages and attorney's fees was reinstated.

The CA found that while Hipe's employment contract shows that he was indeed employed as plumber for a six-month period, the addendum thereto provides for "possible extension of up to 10 months, at the company's discretion."<sup>[57]</sup> Hipe was, thus, still under the employ of respondents when he sustained his injury.<sup>[58]</sup> Hence, the referral to the company-designated physician after his repatriation and the subsequent fit-to-work certification issued in his favor support the claim that he was medically repatriated.<sup>[59]</sup> Accordingly, the CA declared that Hipe was entitled to his "earned wages and benefits," including permanent disability benefits.<sup>[60]</sup>

Dissatisfied, respondents filed a motion for reconsideration<sup>[61]</sup> which was, however, denied in a Resolution<sup>[62]</sup> dated December 3, 2012, hence, the instant petition.<sup>[63]</sup>

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the CA erred in granting Hipe's petition for *certiorari*, thereby setting aside the NLRC Decision dismissing the complaint and adjudging Hipe's entitlement to permanent disability benefits.

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

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.<sup>[64]</sup>

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when,

*inter alia*, its findings and conclusions are not supported by substantial evidence,<sup>[65]</sup> or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>[66]</sup> The *onus probandi* falls on the seafarer to establish his claim for disability benefits by the requisite quantum of evidence to justify the grant of relief.<sup>[67]</sup>

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting Hipe's *certiorari* petition since the NLRC did not gravely abuse its discretion in dismissing the complaint for permanent disability benefits for Hipe's failure to establish his claim through substantial evidence.

The issue of whether the seafarer can legally demand and claim disability benefits from the employer/manning agency for an injury or illness suffered may be determined from the pertinent provisions of Section 20 (B) of the 2000 POEA-SEC<sup>[68]</sup> which enumerates the duties of an employer to his employee who suffers a work-related injury or disease during the term of his employment,<sup>[69]</sup> viz.:

## 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. x x x.

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 or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period 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