

FIRST DIVISION

[G.R. No. 198501, January 30, 2013]

**KESTREL SHIPPING CO., INC./ CAPT. AMADOR P. SERVILLON
AND ATLANTIC MANNING LTD., PETITIONERS, VS. FRANCISCO
D. MUNAR, RESPONDENT.**

D E C I S I O N

REYES, J.:

This is a petition for review on *certiorari* assailing the Decision^[1] dated January 28, 2011 and Resolution^[2] dated September 6, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110878.

The facts leading to the filing of this petition are undisputed.

On March 23, 2006, petitioner Kestrel Shipping, Inc. (Kestrel), on behalf of its principal, petitioner Atlantic Manning, Ltd., and respondent Francisco Munar (Munar) forged a six (6)-month employment contract designating Munar as pump man for M/V Southern Unity. As pump man, his duties include: (a) operating, maintaining and repairing power-driven pumps, valves and related machinery; (b) transferring materials to and from vessels and terminal storages; (c) transferring liquids by siphoning; (d) installing hoses and pipes between pumps and containers that require filling or emptying; (e) maintenance of pump rooms and similar spaces; (f) assisting in the cleaning of tanks, crude oil washing, gas inerting, purging of tanks and wage sampling of cargo; (g) checking and recording cargo temperature; and (h) operating tank heating equipment.^[3]

On October 12, 2006, after Munar assisted in manually lifting the ship's anchor windlass motor that weighs about 350 kilograms, he started to limp and experience severe pain in his lumbar region. On October 18, 2006, Munar was admitted at the Entabeni Hospital in Durban, South Africa. According to his attending physician, Dr. Soma T. Govender (Dr. Govender), the x-ray and magnetic resonant image (MRI) of Munar's lumbar spine showed degenerative changes, which required him to take pain medication, use pelvic traction, and undergo physiotherapy. In his medical report⁴ dated October 19, 2006, Dr. Govender stated that:

I arranged for him to have lumbar spine x-rays and this showed that he had degenerative changes especially of the lower lumbar spine in the L3/4 and L5/S1 region with degenerative changes noted bilaterally. I proceeded to do a MRI of the lumbar spine to exclude an acute prolapsed disc and this confirmed degenerative changes of the lumbar spine extending from the L2/3 region and L3/4 and the worst affected levels appeared to be L4/5 and L5/S1.

x x x x

I have admitted him for a course on intensive conservative management in hospital. He has been commenced on pelvic traction and been given pain medication, which includes Narcotic analgesia, muscle relaxants, and anti-inflammatories. I have also commenced him on a course of physiotherapy and hopefully with this conservative mode of treatment he should show sufficient improvement to obviate any spinal surgery.^[5]

On October 24, 2006, Dr. Govender issued another medical report^[6] where he stated that while Munar's improved condition allowed him to travel, he would require assistance in carrying his things and should be lying down for the entire duration of the trip. Munar should undergo further treatment and management in a spine rehabilitation facility but if he would not register a positive response thereto, he must undergo surgery. Specifically:

Mr. Munar is currently recovered from the acute pain syndrome that he first presented with. Although he has not recuperated completely he has progressed to the state where he will be able to travel back to the Philippines (sic) with assistance. He will require assistance with regard to his baggage transfers and he should also be accommodated on the aircraft so that he can lie down, as this would minimize the amount of pressure on his lumbar inter-vertebral disc and minimize the nerve root compression. It is reasonable to assume that the heavy lifting that forms part of his daily work duties has contributed significantly to the abnormalities demonstrated on his lumbar spine MRI scans. x x x.

Mr. Munar will require further treatment and management in the Philippines. I would recommend a further course of conservative treatment for a few more weeks. If this does not settle he may then require surgical intervention with decompression of the areas of stenosis (narrowing) and removal of the disc fragments that are compressing the nerve roots and a possible fusion of his lower back. However, this will depend on the response to the conservative treatment and his recovery after such surgery may take up to 3 months.^[7]

Dr. Govender also declared Munar unfit to perform his usual sea duties:

Whether he has further surgery or not, it will not be possible for Mr. Munar to continue performing the "heavy manual duties" that [his] job requires any longer, as this could exacerbate his lumbar spine problem. From this perspective he is medically unfit to continue such duties. x x x^[8]

On October 28, 2006, Munar was repatriated.

On October 30, 2006, Munar was admitted at the Chinese General Hospital. For two

(2) weeks, he underwent intensive physiotherapy and was attended to by the following doctors: Dr. Tiong Sam Lim (Dr. Lim), a spine surgeon; Dr. Antonio Periquet (Dr. Periquet), a specialist on physical rehabilitation medicine; and Dr. Fidel Chua (Dr. Chua) of Trans Global Health Systems, Inc. to whom Kestrel referred his case for evaluation.^[9]

On November 17, 2006, Dr. Chua issued a medical report,^[10] stating that Munar did not respond positively to the treatment and recommending that he undergo laminectomy and dissectomy, procedures which would entail a recovery period from four (4) to six (6) months:

The above patient had 2 weeks intensive (sic) physiotherapy but no improvement. I had conference with Dr. Tiong Sam Lim (spinal surgeon) and Dr. Antonio Periquet (rehabilitation medicine) and strongly suggest patient to undergo Laminectomy & dissectomy which will approximately cost PHP 120,000.00 to PHP 150,000.00 barring complication.

Recuperation will take 4-6 months from date of operation.^[11]

On December 2, 2006, Munar had surgical intervention.

On December 20, 2006, he was discharged from the hospital. In his medical report^[12] of even date, Dr. Chua diagnosed Munar as suffering from herniated disc and that while the surgery was successful, Munar should continue physiotherapy:

The above patient discharged today from Chinese General Hospital. He underwent Laminectomy and Dissectomy last December 2, 2006. Since he is from La Union, he may continue his physiotherapy in his hometown.

At present, the prognosis is good and recuperation will take 4-6 months from date of operation.^[13]

Munar continued his physiotherapy sessions at Lorma Medical Center at Carlatan, San Fernando City, La Union.^[14]

On February 27, 2007, Munar was physically examined by Dr. Lim and Dr. Periquet. The following observations were noted in the medical report Dr. Chua issued:

Patient was re-evaluated by Dr. Tiong Sam Lim with finding of right lower extremities has improved but there is still pain on straight leg raise of left and weak extensor hallis longes.

He was also evaluated by Dr. Antonio Periquet with following finding

1. there is a decrease in pain
2. tenderness – lumbar paravertebral
3. weakness left lower extremity

4. decrease in sensation from T 10 down
5. SLR – 30° left; full – right
6. decrease ankle jerk left
7. pain on all trunk motion^[15]

On April 11 and 12, 2007, Munar was once again examined by Dr. Periquet and Dr. Lim, respectively. On May 3, 2007, Dr. Chua issued a medical report^[16] where he enumerated the findings of Dr. Periquet and Dr. Lim and rated Munar's impediment as Grade 8.

The above patient [was] re-evaluated by Dr. Antonio Periquet on April 11, 2007 with report of pain level is 5/10

- SLR-45° bilateral, weakness left foot muscle, decrease sensation below mid-thigh
- Tenderness-lumbo sacral process and left lumbar area
- Pain on side bending and forward flexion

He is advised to continue physiotherapy.

He was also seen by Dr. Tiong Sam Lim on April 12, 2007 and advised to continue physiotherapy and recommended disability assessment.

After thorough evaluation, the report of Dr. Antonio Periquet; Dr. Tiong Sam Lim and Dr. Edward Lingayo, patient will take a long time to fully recovered.

Therefore, he may [be] given disability.

Based on Amended POEA Contract Section 32-CHEST-TRUNK- SPINE # 5- disability grade 8.^[17]

Meantime, on April 17, 2007, Munar filed a complaint for total and permanent disability benefits. His complaint was docketed as NLRC-NCR Case No. OFW-07-04-00970-00 and raffled to Labor Arbiter Veneranda Guerrero (LA Guerrero). Munar claimed that the mere fact that his medical condition, which incapacitated him to engage in any gainful employment, persisted for more than 120 days automatically entitles him to total and permanent disability benefits.

During the mandatory mediation and conciliation conferences, petitioners invoked Dr. Chua's assessment per his medical report dated May 3, 2007 and offered to pay Munar the benefit corresponding to Grade 8 disabilities or \$16,795.00. Munar rejected petitioners' offer and maintained that his disability should be rated as Grade 1. Munar relied on the following assessment made by Dr. Edward L. Chiu (Dr. Chiu), an orthopedic surgeon at Lorma Medical Center, in a medical certificate^[18] the latter issued on May 21, 2007:

At present, he could tolerate walking for short distances due to his low back pain. There is weakness of his left foot.

Due to his back injury and pain, he could not go back to work. He could not tolerate strenuous physical activities[.]^[19]

In a Decision^[20] dated May 30, 2008, LA Guerrero awarded Munar with total and permanent disability benefits in the amount of US\$60,000.00 and attorney's fees equivalent to ten percent (10%) of the former. As between the assessment of Dr. Chua and that of Dr. Chiu, LA Guerrero gave more weight to the latter:

Assessing the parties' respective averments and documents adduced in support thereof, this Office finds that the complainant is entitled to the maximum compensation benefit as provided under the POEA Standard Employment Contract in the amount of US\$60,000.00.

The medical certificate issued by Dr. Edward L. Chiu dated May 21, 2007 categorically states that complainant cannot go back to work due to his back injury and that he cannot tolerate strenuous physical activities. Given the nature of his shipboard employment, it is logical to conclude that the complainant cannot resume shipboard employment. This conclusion is borne out by the respondents' own medical certificate showing that after the complainant underwent surgery in December, 2006 he was expected to recuperate for a period of 4-6 months, and on May 3, 2007 the respondents' designated physician determined that the complainant "will take a long time to fully recovered (sic)". And, while he was assessed with Impediment Grade 8, the assessment is not accompanied by any justification, other than the vague qualification on the length of time of recovery.

Evidently, such ambiguous assessment, vis-à-vis that made by the complainant's independent physician who had taken over the complainant's therapy, cannot be a basis for the grant of the assessed disability grading. The determination of the company designated physician cannot prevail over the specific assessment made by the independent physician.

Verily the illness sustained by the complainant has rendered him unfit to continue his employment as seafarer. Accordingly, he is entitled to the maximum compensation benefit of US\$60,000.00.

It is well-settled that:

"disability should not be understood more on its medical significance but on the loss of earning capacity. 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 kind of work which a person of (his) mentality and attainment could