

[G.R. Nos. 194490-91, March 20, 2013]

TRANSOCEAN SHIP MANAGEMENT (PHILS.), INC., CARLOS S. SALINAS, AND GENERAL MARINE SERVICES CORPORATION, PETITIONERS, VS. INOCENCIO B. VEDAD, RESPONDENT.

[G.R. NOS. 194518 & 194524]

INOCENCIO B. VEDAD, PETITIONER, VS. TRANSOCEAN SHIP MANAGEMENT (PHILS.), INC., CARLOS S. SALINAS, AND GENERAL MARINE SERVICES CORPORATION, RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

It would be an unsound policy to allow manning agencies and their principals to hedge in giving sickness allowance to our seafarers while waiting for the assessment and declaration by the company-designated physician on whether or not the injury or illness is work-related. Otherwise, our poor seafarers who sacrifice their health and time away from their families and are stricken with some ailments will not be given the wherewithal to keep body and soul together and provide for their families while they are incapacitated or unable to perform their usual work as such seafarers.

The Case

In these consolidated Petitions for Review on Certiorari under Rule 45, the parties uniformly assail the July 28, 2010 Decision^[1] and November 11, 2010 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP Nos. 105601 and 105615, which modified the National Labor Relations Commission's (NLRC's) reversal of the grant by the Labor Arbiter of full permanent total disability benefits to seaman Inocencio B. Vedad (Inocencio).

The Facts

Inocencio was a seafarer employed as second engineer by Transocean Ship Management (Phils.), Inc. (Transocean),^[3] a local manning agency, for its principal, General Marine Services Corporation (General Marine). Carlos S. Salinas (Salinas) was the President of Transocean.^[4] Inocencio's employment under the Philippine Overseas Employment Agency-Standard Employment Contract (POEA-SEC) was for a 10-month period from June 1, 2005 to March 1, 2006.^[5] Inocencio was deployed and went on board M/V *Invicta* after the required pre-employment medical examination (PEME) which gave him a clean bill of health.

Before the expiry of his 10-month contract or specifically on February 19, 2006, Inocencio was, however, repatriated for medical reasons. On board M/V *Invicta* he

fell ill and experienced fever, sore throat and pain in his right ear. The ship docked on February 3, 2006 at Port Louis, Mauritius. The day after, on February 4, 2006, he underwent medical examination with the finding of "chronic suppurative otitis media right [CSOM(R)] with acute pharyngitis[, with] mild maxillary sinusitis," for which he was prescribed antibiotics and ear drops with the recommendation of a follow-up examination of the CSOM(R).^[6] Subsequently on February 16, 2006, he underwent a follow-up examination on his illness in Tanjung Priok, Indonesia, and consequently, his eventual repatriation on February 19, 2006 for further evaluation and treatment.

Inocencio immediately reported to the company-designated doctor. Dr. Nicomedes G. Cruz (Dr. Cruz) of the NGC Medical Clinic in Manila, for diagnosis and treatment. On May 10, 2006, he underwent tonsillectomy but was later found by a histopathology report to be suffering from cancer of the right tonsil. The final histopathologic diagnosis reports: "undifferentiated carcinoma, right tonsil; and chronic follicular tonsillitis with actinomycosis, left tonsil."^[7] Dr. Cruz then advised Inocencio to undergo chemotherapy and linear treatment at an estimated cost of PHP 500,000, which Transocean and General Marine promised to shoulder. Inocencio started with the procedure but could not continue due to the failure of Transocean and General Marine to provide the necessary amount. This constrained Inocencio to file, on July 17, 2006, a Complaint^[8] before the Labor Arbiter for, among others, total permanent disability benefits and sickness allowance, docketed as NLRC NCR OFW Case No. (M) 06-97-02117-00.

Decision of the Labor Arbiter

On August 10, 2007, the Labor Arbiter rendered a Decision, awarding Inocencio USD 60,000 as permanent total disability benefits plus 10% attorney's fees while dismissing all other claims, the decretal portion reading:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Transocean Ship Management Phils. and General Marine Services Corporation to jointly and severally pay the complainant his disability compensation in the amount of US\$60,000.00 in its peso equivalent at the time of actual payment, plus 10% thereof by way of attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.^[9]

The Labor Arbiter, applying Section 20 of the POEA-SEC, decreed Inocencio's tonsil cancer to be presumptively work-related, since it has not been proved otherwise and which lasted for more than 120 days. The Labor Arbiter likewise found Transocean and General Marine to have reneged on their promise to shoulder the medical procedures prescribed for Inocencio's treatment.

Decision of the NLRC

Upon appeal by Transocean, Salinas, and General Marine, the NLRC, by its May 29,

2008 Decision in NLRC LAC No. 12-000379-07(8), vacated that of the Labor Arbiter and awarded sickness allowance only equivalent to 120 days or four months salary amounting to US D 4,616 and the payment or reimbursement of Inocencio's medical expenses. The decretal portion of the NLRC's Decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby VACATED and the Respondents-Appellants are ordered to pay Complainant-Appellee sickness allowance equivalent to his basic wage for 120 days, amounting US\$4,616.00 (USS 1,154 x 4 months) or its peso equivalent at the time of payment, plus payment/reimbursement of his medical expenses.

SO ORDERED.^[10]

The NLRC held that the June 9, 2006 medical report/certification^[11] by the company-designated physician, Dr. Cruz, that the tonsil cancer of Inocencio was not work-related shifted the burden of proof to Inocencio who failed to substantiate that his illness was work-related. As the NLRC further ruled, the PEME alone was not conclusive proof of Inocencio's state of health before deployment. However, the NLRC did find that Inocencio was, indeed, permanently totally disabled and was not at fault when he failed to undergo the necessary treatment given his condition due to the failure of Transocean and General Marine to provide the payment as earlier promised. Thus, Transocean, et al. were ordered to reimburse Inocencio's medical expenses.^[12]

Decision of the CA

Both parties appealed the NLRC ruling before the CA, docketed as CA-G.R. SP Nos. 105601 and 105615. On July 28, 2010, the CA rendered its Decision, modifying the NLRC Decision by setting aside the award of sickness allowance of USD 4,616 but affirming the grant of reimbursement of medical expenses. The *fallo* reads:

ACCORDINGLY:

(a) In CA-G.R. SP No. 105601, the petition is GRANTED IN PART. The *Decision* dated May 29, 2008 of the National Labor Relations Commission in NLRC LAC No. 12-000379-07(8) is MODIFIED so that the portion therein awarding Inocencio Vedad sickness allowance. amounting to USS4,616.00 (USS 1,154 x 4 months) or its peso equivalent at the time of payment, is SET ASIDE. So far as it ordered Trans Ocean Ship Management Philippines and General Marine Services Corporation to reimburse or pay for jointly and severally the medical expenses of Inocencio Vedad, the same is AFFIRMED.

(b) In CA-G.R. SP No. 105615, the petition is DISMISSED for lack of merit.

No costs.

SO ORDERED.^[13]

In so ruling, the CA affirmed the NLRC's determination that Inocencio's cancer of the tonsil, based on the certification of the company designated physician, Dr. Cruz, was not work-related. This determination, the CA observed, citing *NYK-Fil Ship Management, Inc. v. Talavera*,^[14] was not rebutted by contrary findings. The CA also held that the mere allegations of Inocencio on the causal relation between his work and ailment are not substantial proof of such relation, and that the PEME before deployment did not render Inocencio's tonsil cancer work-related either, for the PEME is not considered exploratory enough to fully ascertain his health before deployment. However, the CA agreed with the NLRC and ruled that Transocean and General Marine must pay or reimburse Inocencio's medical expenses based on their offer and promise to shoulder the medical treatment, such as the "chemotherapy of [Inocencio], costing [Php] 500,000,"^[15] pointing out that Inocencio, indeed, initially underwent some of the prescribed medical procedures until Transocean and General Marine unilaterally withdrew the payment of their obligation.

Hence, the parties filed these petitions.

The Issues

In G.R. Nos. 194490-91, Transocean, et al. raise the sole ground that:

The Honorable Court of Appeals committed grave abuse of discretion in ordering herein petitioners [Transocean, et al.] to pay or reimburse respondent [Inocencio's] medical expenses.^[16]

On the other hand, Inocencio raises the following assignment of errors in G.R. Nos. 194518 & 194524:

1. The Honorable Court of Appeals committed a reversible error in the questioned decision and resolution sufficient to warrant the exercise of this Honorable Court's discretionary appellate jurisdiction. The factual findings of the NLRC and the Court of Appeals are not based on substantial evidence.
2. The decisions of the Court of Appeals are contrary to applicable law and jurisprudence.
3. The Court of Appeals made manifest error in not awarding attorney's fees.^[17]

The Court's Ruling

The petition of Transocean, et al. is unmeritorious. The petitions of Inocencio, on the other hand, are partly meritorious. He is entitled to both sickness allowance and

payment or reimbursement of his medical expenses as properly awarded by the NLRC.

Pertinent to the resolution of this case are the following provisos of the POEA-SEC governing the employment of Filipino seafarers on board ocean-going vessels under POEA Memorandum Circular No. 09, Series of 2000:

SECTION 20. COMPENSATION AND BENEFITS

XXXX

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

XXXX

- 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 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 illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

(Emphasis supplied.)

Inocencio entitled to sickness allowance

Inocencio got ill with what appeared to be tonsillitis while on board MV *Invicta*, for which he was treated at a foreign port where the ship docked. His malady still continued despite the treatment as he was, in fact, repatriated before the end of his 10-month contract on medical grounds.

With the foregoing facts and the application of the above-quoted pertinent POEA-SEC provisos, it is abundantly clear that Inocencio is entitled to receive sickness allowance from his repatriation for medical treatment, which is equivalent to his