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SECOND DIVISION

[G.R. No. 194362, June 26, 2013]

PHILIPPINE HAMMONIA SHIP AGENCY, INC. (NOW KNOWN AS BSM CREW SERVICE CENTRE PHILIPPINES, INC.) AND DORCHESTER MARINE LTD., PETITIONERS, VS. EULOGIO V. DUMADAG, RESPONDENT.

D E C I S I O N

BRION, J.:

We resolve the petition for review on *certiorari*[1] seeking to nullify the decision[2] dated August 31, 2010 and the resolution[3] dated November 2, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 111582.

The Antecedents

On February 12, 2007, the Philippine Hammonia Ship Agency, Inc. (now known as BSM Crew Service Centre Philippines, Inc.), in behalf of its principal, Dorchester Marine Ltd. (*petitioners*), hired respondent Eulogio V. Dumadag for four months as Able Bodied Seaman for the vessel *Al Hamra*, pursuant to the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC). Dumadag was to receive a monthly salary of US$558.00, plus other benefits. Before he boarded the vessel *Al Hamra*, Dumadag underwent a pre-employment medical examination and was declared fit to work.

Sometime in May 2007, while on board the vessel, Dumadag complained of difficulty in sleeping and changes in his body temperature. On May 18, 2007, a physician at the Honmoku Hospital in Yokohama, Japan examined him. He also underwent ultra-sonographic, blood and ECG examinations and was found to be normal and "fit for duty," but was advised to have bed rest for two to three days.[4] Thereafter, Dumadag complained of muscle stiffness in his entire body. On June 20, 2007, he was again subjected to blood tests, urinalysis and uric laboratory procedures in Japan. He was found "fit for light duty for 5-7 days."[5]

On July 19, 2007, his contract completed, Dumadag returned to the Philippines. Allegedly, upon his request, the agency referred him to the company-designated physician, Dr. Wilanie Romero-Dacanay of the Metropolitan Medical Center *(MMC)*, for medical examination. At the MMC, Dumadag underwent baseline laboratory tests revealing "normal complete blood count, creatinine, sodium, potassium, calcium and elevated creatinine kinase."[6] He was also subjected to thyroid function tests that likewise showed normal results. Further, he underwent psychological tests and treatment. He was assessed on August 6, 2007 to have "Adjustment Disorder with Mixed Anxiety and Depressed Mood," "Hypercreatinine Phospokinase," and "right Carpal Tunnel Syndrome."[7] He was subsequently

declared "fit to resume sea duties as of November 6, 2007" by the company-designated specialist.[8] The petitioners shouldered Dumadag's medical expenses, professional fees and physical therapy sessions with the company-designated physician.

Dumadag was not rehired by the petitioners. He claimed that he applied for employment with other manning agencies, but was unsuccessful.

On December 5, 2007, Dumadag consulted Dr. Frederic F. Diyco, an orthopedic surgeon at the Philippine Orthopedic Center, who certified that he was suffering from Carpal Tunnel Syndrome of the right wrist. Dr. Diyco gave him a temporary partial disability assessment.[9] On January 8, 2008, Dumadag saw Dr. Ma. Ciedelle M.N. Paez-Rogacion, specializing in family medicine and psychiatry. Dr. Rogacion evaluated him to be suffering from minor depression.[10]

On March 8, 2008, Dumadag again sought medical advice from Dr. Ariel C. Domingo, a family health and acupuncture physician. Dr. Domingo found him to be still suffering from adjustment disorder, with mixed anxiety and in a depressed mood, hypercreatinine phospokinase and carpal tunnel syndrome. He assessed Dumadag to be "unfit to work."[11] Further, or on April 13, 2008, Dumadag consulted Dr. Nicanor F. Escutin, an orthopedic surgeon, who certified that he had generalized muscular weakness and that "he cannot perform nor function fully all his previous activities."[12] Dr. Escutin declared Dumadag unfit for sea duty in whatever capacity and gave him a permanent total disability assessment.[13]

After his consultations with the four physicians, Dumadag filed a claim for permanent total disability benefits, reimbursement of medical expenses, sickness allowance and attorney's fees against the petitioners.

The Compulsory Arbitration Decisions

In a decision dated February 27, 2009,[14] Labor Arbiter (*LA*) Eduardo J. Carpio found merit in the complaint and ordered the petitioners, jointly and severally, to pay Dumadag US$82,500.00 in permanent total disability benefits, plus 10% attorney's fees. LA Carpio declared:

> The assessment of the company physician is highly doubtful in the face of the continuing inability of complainant to work for more than a year already, coupled with the fact that his own designated physicians have found that complainant was far from being "fit" to return to his work as Able-bodied seaman. Despite the company doctor's claim, complainant was found by his physicians to be still suffering from depression and had muscle damage on his upper and lower extremities, resulting in pain in his right hand and generalized muscle weakness, for which reason he was declared unfit for sea duty. In contrast to the said findings, the company doctor failed to substantiate her conclusion that complainant is "fit to work."[15]

LA Carpio noted that the petitioners suddenly stopped rehiring Dumadag despite the

fact that they had continuously employed him for at least fifteen (15) times for the last 15 years. He viewed this as the most convincing proof that Dumadag's inability to work was due to the illness he contracted in the course of his last employment.

On appeal by the petitioners, the National Labor Relations Commission (NLRC), in a resolution dated July 30, 2009, affirmed LA Carpio's decision.[16] On September 28, 2009, it denied the petitioners' motion for reconsideration.[17] The petitioners then elevated the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court, contending that the NLRC gravely abused its discretion in disregarding the "fit-to-work" assessment of the company-designated physician.

The Assailed CA Decision

The CA denied the petition in its decision of August 31, 2010.[18] It upheld the NLRC rulings *in toto*. It **found no grave abuse of discretion** on the part of the NLRC when it sustained LA Carpio's award of permanent total disability benefits to Dumadag on the basis of the findings of the physicians of his choice. Also, as LA Carpio and the NLRC did, it noted that Dumadag was not rehired by the petitioners after he was declared fit to work by the company-designated physician and neither was he able to secure employment through other manning agencies.

The petitioners moved for reconsideration, but the CA denied the motion in its resolution of November 2, 2010.[19] Hence, the petition.

The Petition

The petitioners contend that the CA committed serious errors and grave abuse of discretion in: (1) ruling that Dumadag is entitled to permanent total disability benefits based solely on the findings of his personal physicians; (2) disregarding the procedure in the POEA-SEC in disputing the assessment of the company-designated physician; (3) adopting the NLRC ruling that the non-rehiring of Dumadag is proof that his inability to work was due to the illness he contracted during his last employment; and (4) affirming the award of attorney's fees despite the fact that their denial of his claim was in good faith and based on just and valid grounds.

The petitioners stress, with respect to the first assignment of error, that under Section 20(B)(2) of the POEA-SEC and under the parties' Collective Bargaining Agreement *(CBA)*, it is the company-designated physician who determines the seafarer's degree of disability or his fitness to work. They point out in this respect that not only is the company-designated physician entrusted with the task of assessing the seafarer's fitness to work or the degree of his disability, but more importantly, he or she is the one who examines and treats the seafarer, thus lending accuracy to his or her evaluation.

The petitioners question the CA's reliance on *HFS Philippines, Inc. v. Pilar*[20] in affirming Dumadag's award based solely on the findings of his physicians. They maintain that although the Court's ruling in *HFS Philippines* recognized the prerogative of the seafarer to dispute the company-designated physician's report by seasonably consulting another doctor, the contrary medical report shall be evaluated first by the labor tribunal and the court based on its inherent merit. The CA, the petitioners point out, failed to evaluate the merit of the reports of Dumadag's

physicians.

The petitioners argue that a careful analysis of the reports presented by both parties would readily show that the company-designated physician's report deserves more credence as these physicians arrived at their results after extensive examination and treatment of Dumadag. On the other hand, an evaluation of the reports of Dumadag's doctors reveals that they were inaccurate and unreliable as they were mere reiterations of the company-designated doctor's diagnoses.

On a related matter, the petitioners fault the CA in disregarding the procedure in the POEA-SEC in the resolution of disability claims *vis-a-vis* the seafarer's disability rating or fitness to work. Citing *Vergara v. Hammonia Maritime Services, Inc.*,[21] they posit that although Dumadag has the right to contest the assessment of the company-designated physician, the findings of his doctors are not binding as the POEA-SEC and even the parties' CBA expressly provide that the parties may agree to consult a third doctor whose opinion shall be binding on them. They submit that since Dumadag failed to observe the procedure, the finding of the company specialist that he is fit to work should be upheld.

With respect to Dumadag's non-hiring, the petitioners submit that the CA gravely abused its discretion when it held that the fact that they did not rehire him is the most convincing proof that his inability to work was due to his illness. They contend that being a seafarer, Dumadag is a contractual employee whose employment is terminated upon the contract's expiration; his non-rehiring should not be taken against them as it is their prerogative to hire or not to hire him. Moreover, Dumadag did not present any evidence to establish his allegation that he was not rehired because of his illness; neither was there a showing that he was deprived of the opportunity to work.

Finally, the petitioners lament the CA's award of attorney's fees to Dumadag, arguing that the denial of his claim was in good faith and based on valid grounds.

The Case for Dumadag

As required by the Court,[22] Dumadag filed his Comment on the petition on April 25, 2011,[23] praying that the petition be dismissed on the following grounds: (1) it raises only questions of fact, in violation of Rule 45 of the Rules of Court; and (2) the CA's award of disability benefits to him is in accord with the evidence.

Dumadag submits that inasmuch as the petition involves an inquiry into the findings of four independent physicians which formed the basis of the rulings of the LA, the NLRC and the CA, it is clear that the petitioners are raising solely factual issues which is not allowed in an appeal by *certiorari*. He avers that should the Court review the facts of the case nonetheless, the petition must fail for lack of merit. He argues that the CA committed no error in upholding the medical opinions of his chosen physicians over the biased and erroneous certification of the company-designated physician.

He bewails the petitioners' attempt to discredit the medical certificates issued by the physicians he consulted. He stresses that the real test that should be applied in his case is whether he had lost his earning capacity due to his injury while employed

with the petitioners. He laments that while the company doctor peremptorily declared that he was fit to resume sea duties as of November 6, 2007, he was never again able to have himself employed as a seaman in any capacity.

Dumadag argues that the opinion of the company doctor is not binding and cannot be the sole basis of whether he is entitled to disability benefits or not, especially considering that the opinions of company physicians are generally self-serving and biased in favor of the company. Further, he maintains that the mere fact that there is no "third opinion" from a doctor appointed by the parties does not automatically mean that the opinion of the company doctor will prevail over that of his chosen physicians. He insists that in case of discrepancy between the certification of the company-designated physician and that of the seaman's doctor, the finding favorable to the seaman should be followed as the Court emphasized in *HFS Philippines, Inc. v. Pilar*.[24] He adds that as a result of his injury, he has become disabled, such that he could not find gainful employment almost four years after his last disembarkation.

Lastly, Dumadag argues that he is entitled to attorney's fees as he was compelled to litigate because of the petitioners' refusal to heed his demand for disability benefits.

Our Ruling

The procedural issue

Dumadag asks that the petition be dismissed outright for raising only questions of fact and not of law, in violation of the rules.[25]

We find **Dumadag's position untenable**. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the parties or any of them. Otherwise stated, there is a question of law when the issue arises as to what the law is on a certain state of facts; there is a question of fact when the issue involves the truth or falsehood of alleged facts.[26] In the present case, the controversy arises not from the findings made by Dumadag's physicians which contradict the fit-to-work certification of the company-designated physician; it arises from the application of the law and jurisprudence on the conflicting assessments of the two sets of physicians. We thus find no procedural obstacle in our review of the case.

Fit-to-work assessment of the company-designated physician versus unfit-to-work certification of the seafarer's chosen physicians

We are confronted, once again, with the question of whose disability assessment should prevail in a maritime disability claim — the fit-to-work assessment of the company-designated physician or the contrary opinion of the seafarer's chosen physicians that he is no longer fit to work. A related question immediately follows — how are the conflicting assessments to be resolved?

In *Vergara v. Hammonia Maritime Services, Inc.*,[27] the Court said: "the