

THIRD DIVISION

[G.R. No. 204076, December 04, 2013]

JEBSENS MARITIME, INC., ESTANISLAO SANTIAGO, AND/OR HAPAG-LLOYD AKTIENGESELL SCHAFT, PETITIONERS, VS. ELENO A. BABOL, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 15, 2012 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No.114966 and its October 8, 2012 Resolution,^[2] which affirmed the October 27, 2009 Decision^[3] of the National Labor Relations Commission (NLRC) and the May 7, 2008 Decision^[4] of the Labor Arbiter (LA), granting permanent and total disability benefits to Eleno A. Babol (*respondent*).

The Facts

On September 21, 2006, respondent was rehired by Hapag Lloyd Aktiengesell Schaft (*Hapag Lloyd*) through its local manning agent, Jebbens Maritime, Incorporated (*Jebbens*) as a reefer fitter for a term of six months. Before joining his vessel of assignment, respondent was subjected to the rigid mandatory Pre-Employment Medical Examination (*PEME*) and was cleared as fit for sea duty. On October 23, 2006, he boarded MV Glasgow Express (formerly named as Maersk Dayton), an ocean-going vessel flying the German flag.

Sometime in February 2007, respondent noticed the swelling of his neck. On March 8, 2007, he was sent to Health Watch Clinics in Fremantle, West Australia, to undergo medical evaluation. With the discovery of a large recurrent left neck mass, a recommendation was issued for his repatriation.

On March 14, 2007, respondent arrived in the Philippines. He was then placed at the Metropolitan Medical Center for treatment and management under the care of Dr. Robert D. Lim, the company-designated physician. There, a biopsy of two soft tissue fragments taken from his swelling neck indicated *Metastatic Undifferentiated Carcinoma*. On April 11, 2007, respondent was diagnosed with *Nasopharyngeal Carcinoma (NPC)*.

The doctors then recommended that respondent undergo six (6) cycles of chemotherapy and thirty nine (39) sessions of radiotherapy for palliative management with a total cost of ₱828,500.00. This recommendation was acted upon by the petitioners who, in good faith, shouldered all the expenses.

On May 18, 2007, the petitioners requested from the company-designated physicians the determination of whether respondent's condition could be considered as work-related or not. Responding to the request, Dr. Christopher Co Peña (*Dr. Co Peña*), the company-designated oncologist, made a report addressed to Dr. Robert Lim, stating respondent's cancer as "likely not work-related." The report also indicated the risk factors that could have contributed to respondent's condition, as follows:

- (1) Diet – salt cured fish;
- (2) Viral agents – Epstein Barr Virus (EBV); and
- (3) Genetic susceptibility – H2 locus antigens, Singapore Antigen BW46 and B17 Antigen.

Despite having received an expensive company-sponsored treatment, respondent still demanded the payment of disability benefits from the petitioners. His demands being unheeded, respondent filed a claim before the LA, docketed as NLRC NCR OFW Case No. (M) 01-00452-08, for the payment of permanent disability benefits, sickness allowance and medical reimbursement.

The petitioners opposed the work-relation argument of respondent in light of a contrary finding made by the company-designated oncologist that NPC was caused by genetic factors; and that full and expensive medical assistance had been generously extended, on top of the medical attention provided to respondent.

The Labor Arbiter's Decision

On May 7, 2008, the LA rendered a decision awarding respondent the sum of US\$60,000.00 as total disability benefits, plus 10% thereof as attorney's fees. It ruled that there existed a causal relationship between respondent's cancer and his diet on board the vessel; and that the petitioners failed to overcome the presumption of the work-relatedness of respondent's disease. The LA disposed as follows:

WHEREFORE, all foregoing premises considered, judgment is hereby rendered finding complainant **ELENO A. BABOL** to have suffered work-related illness resulting to [sic] his total permanent disability and thus ordering respondents **ABOITIZ JEBSENS MARITIME, INC., HAPAG-LLOYD AKTIENGESELL SCHAFT** and **ESTANISLAO SANTIAGO** to jointly and severally pay him the amount of US\$60,000.00 plus Ten Percent (10%) thereof as Attorney's Fees or in the total amount of US\$66,000.00 or its Philippine Peso equivalent at the time of actual payment.

All other claims are dismissed for lack of merit.

SO ORDERED.^[5]

The NLRC Ruling

On appeal, the NLRC, in its October 27, 2009 Decision, affirmed the LA ruling but deleted the award for attorney's fees. It held that the petitioners failed to substantially disprove the disputable presumption of work-relation under the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*). It further noted that respondent, being a seafarer, had no choice but to eat the food prepared by the kitchen staff and correlatively his diet was limited to salt-cured foods such as salted fish, dried meat, salted egg, frozen meat, and other preserved goods, all of which allegedly increased the risk of contracting NPC. The dispositive portion of its decision reads:

WHEREFORE, the Decision of the Labor Arbiter is AFFIRMED with MODIFICATION in that the award of attorney's fees is DELETED.

SO ORDERED.^[6]

Both parties moved for reconsideration. On March 26, 2010, the NLRC issued a resolution^[7] denying it.

Via a petition for *certiorari* under Rule 65 of the Rules of Court filed before the CA, the petitioners argued that the NLRC committed grave abuse of discretion in ruling for respondent.

The CA's Decision

On May 15, 2012, the CA dismissed the petition. Echoing the findings of the NLRC and the LA, it held that the nature and circumstances of respondent's work caused his illness or at least aggravated any pre-existing condition he might have, hence compensable.^[8] It gave weight to the findings of the NLRC and the LA that the risk factors as relayed by the company-designated physician were attendant in respondent's case, such as: (1) his diet while on board which was high in salt-cured fish and preserved foods; (2) and his exposure to toxic materials, smoke, and diesel fumes while working for the petitioners in various capacities for almost two decades. Having found a link between respondent's working conditions and the disease, it concluded that the claims deserved merit in accordance with this Court's ruling in *Magsaysay Maritime Corporation v. National Labor Relations Commission*^[9] where it was recognized as sufficient, in order to successfully claim the benefits under the contract, that the work has been proven as contributory, even in a small degree, to the development of a worker's disease.

Unfazed with the adverse ruling, the petitioners moved for reconsideration. In its resolution, dated October 8, 2012, the CA denied the said motion for reconsideration.

Hence, this petition.

ISSUES

- A. Whether or not the Court of Appeals gravely erred in ruling that respondent's condition, Nasopharyngeal Cancer, is work-related.**
- B. Whether or not the Court of Appeals gravely erred in considering respondent's supposed prior employments with petitioners as relevant in determining entitlement to disability benefits.**

C. Whether or not the Court of Appeals gravely erred in ruling that petitioners failed to present substantial evidence that respondent's condition is not work-related.^[10]

According to the petitioners, the CA blindly adopted NLRC's conclusion that the risk factors could be attributed, even in a lesser degree, to respondent's working conditions on board the petitioners' vessel; and that the said risks, especially the alleged dietary cause involving salt-cured fish, were not sufficiently proven by respondent, being the party tasked with the burden of proof. To bolster their case, the petitioners reiterate their submission of evidence showing that the dietary factors could not have been true as varied and fresh provisions were available for the seafarer's consumption.

Moreover, they claim that the CA erred in adopting the concept of work-aggravation because the POEA-SEC does not recognize it; and that respondent's prior employment history with the petitioners should not have been considered since only the period specified in the contract could be used as basis for compensability claims under the POEA-SEC.

In sum, the petitioners are of the position that no connection whatsoever between respondent's work and the cancer was sufficiently established.

Respondent's Position

In his Comment,^[11] respondent submits that the CA was correct in awarding him permanent disability benefits considering that this conclusion was substantially supported by facts and evidence on record; that the "likely not work-related" assessment by Dr. Co Peña did not preclude the finding that the cancer was attributable to work because it merely presupposed probability and not certainty; that the dietary risk factor for the development of his cancer was sufficiently established since it was common knowledge that seamen were not at liberty to prepare their own food to suit specific health needs; and that his diet was proven as limited only to or at least involved existing salt-cured supplies. By these submissions, respondent avers that a reasonable connection has been ascertained to prove his entitlement to the claims prayed for.

The Court's Ruling

The well-entrenched rule in this jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari* under Rule 45. This rule, however, is not absolute and admits certain exceptions, such as when the petitioner persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or *court a quo*,^[12] as Section 5, Rule 133 of the Rules of Court states in express terms that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established only if supported by substantial evidence.^[13]

Here, the petitioners question the conclusion that the disease subject of this petition is a work-related illness or at least aggravated by the working conditions onboard the vessel. They argue that respondent failed to present substantial evidence in support of his claims for compensability.

The Court is not persuaded.

The Principle of Work-relation

The 2000 POEA-SEC contract governs the claims for disability benefits by respondent as he was employed by the petitioners in September of 2006.

Pursuant to the said contract, the injury or illness must be work-related and must have existed during the term of the seafarer's employment in order for compensability to arise.^[14] Work-relation must, therefore, be established.

As a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC. Nevertheless, should it be not classified as occupational in nature, Section 20 (B) paragraph 4 of the POEA-SEC^[15] provides that such diseases are disputably presumed as work-related.

In this case, it is undisputed that NPC afflicted respondent while on board the petitioners' vessel. As a non-occupational disease, it has the disputable presumption of being work-related. This presumption obviously works in the seafarer's favor.^[16] Hence, unless contrary evidence is presented by the employers, the work-relatedness of the disease must be sustained.^[17]

In this wise, the petitioners, as employers, failed to disprove the presumption of NPC's work-relatedness. They