

FIRST DIVISION

[G.R. No. 177578, January 25, 2012]

MAGSAYSAY MARITIME CORPORATION AND/OR WASTFEL-LARSEN MANAGEMENT A/S*, PETITIONERS, VS. OBERTO S. LOBUSTA, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Petitioners appeal the Decision^[1] dated August 18, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 74035 and its Resolution^[2] dated April 19, 2007, denying the motion for reconsideration thereof. The CA declared that respondent is suffering from permanent total disability and ordered petitioners to pay him US\$2,060 as medical allowance, US\$60,000 as disability benefits and 5% of the total monetary award as attorney's fees.

The facts follow:

Petitioner Magsaysay Maritime Corporation is a domestic corporation and the local manning agent of the vessel MV "Fossanger" and of petitioner Wastfel-Larsen Management A/S.^[3]

Respondent Oberto S. Lobusta is a seaman who has worked for Magsaysay Maritime Corporation since 1994.^[4] In March 1998, he was hired again as Able Seaman by Magsaysay Maritime Corporation in behalf of its principal Wastfel-Larsen Management A/S. The employment contract^[5] provides for Lobusta's basic salary of US\$515 and overtime pay of US\$206 per month. It also provides that the standard terms and conditions governing the employment of Filipino seafarers on board ocean-going vessels, approved per Department Order No. 33 of the Department of Labor and Employment and Memorandum Circular No. 55 of the Philippine Overseas Employment Administration (POEA Standard Employment Contract), both series of 1996, shall be strictly and faithfully observed.

Lobusta boarded MV "Fossanger" on March 16, 1998.^[6] After two months, he complained of breathing difficulty and back pain. On May 12, 1998, while the vessel was in Singapore, Lobusta was admitted at Gleneagles Maritime Medical Center and was diagnosed to be suffering from severe acute bronchial asthma with secondary infection and lumbosacral muscle strain. Dr. C K Lee certified that Lobusta was fit for discharge on May 21, 1998, for repatriation for further treatment.^[7]

Upon repatriation, Lobusta was referred to Metropolitan Hospital. The medical coordinator, Dr. Robert Lim, issued numerous medical reports regarding Lobusta's condition. Lobusta was first seen by a Pulmonologist and an Orthopedic Surgeon on

May 22, 1998.^[8] Upon reexamination by the Orthopedic Surgeon on August 11, 1998, he opined that Lobusta needs surgery, called decompression laminectomy,^[9] which was done on August 30, 1998.^[10] On October 12, 1998, Dr. Lim issued another medical report stating the opinion of the Orthopedic Surgeon that the prognosis for Lobusta's recovery after the spine surgery is good. However, the Pulmonologist opined that Lobusta's obstructive airway disease needs to be monitored regularly and that Lobusta needs to be on bronchodilator indefinitely. Hence, Lobusta should be declared disabled with a suggested disability grading of 10-20%.^[11] The suggestion was not heeded and Lobusta's treatment continued.

On February 16, 1999, Lobusta was reexamined. Dr. Lim reported that Lobusta still complains of pain at the lumbosacral area although the EMG/NCV^[12] test revealed normal findings. Lobusta was prescribed medications and was advised to return on March 16, 1999 for re-evaluation.^[13]

On February 19, 1999, Dr. Lim reported that Lobusta has been diagnosed to have a moderate obstructive pulmonary disease which tends to be a chronic problem, such that Lobusta needs to be on medications indefinitely. Dr. Lim also stated that Lobusta has probably reached his maximum medical care.^[14]

Petitioners "then faced the need for confirmation and grading by a second opinion" and "it took the parties time to agree on a common doctor, until they agreed on Dr. Camilo Roa."^[15] Dr. Roa's clinical summary states that Lobusta's latest follow-up check-up was on December 16, 1999; that Lobusta is not physically fit to resume his normal work as a seaman due to the persistence of his symptoms; that his asthma will remain chronically active and will be marked by intermittent exacerbations; and that he needs multiple controller medications for his asthma.^[16]

As the parties failed to reach a settlement as to the amount to which Lobusta is entitled, Lobusta filed on October 2, 2000, a complaint^[17] for disability/medical benefits against petitioners before the National Labor Relations Commission (NLRC).

Sometime in October 2000, Magsaysay Maritime Corporation suggested that Lobusta be examined by another company-designated doctor for an independent medical examination. The parties agreed on an independent medical examination by Dr. Annette M. David, whose findings it was agreed upon, would be considered final.

On November 17, 2000, Dr. David interviewed and examined Lobusta.^[18] Pertinent portions of Dr. David's report read:

xxx Based on the Classes of Respiratory Impairment as described in the American Medical Association's Guidelines for the Evaluation of Permanent Impairment, this is equivalent to Class 2 or Mild Impairment of the Whole Person (level of impairment: 10-25% of the whole person). Given the persistence of the symptoms despite an adequate medical regimen, the impairment may be considered permanent.

The determination of disability and fitness for duty/return-to-work is

more complex. During asymptomatic periods, Mr. Lobusta could conceivably be capable of performing the duties and responsibilities of an Able Seaman as listed in the memos provided by Pandiman (Duties of an Able Seaman on board an average vessel, January 26, 2000; and Deck Crew general Responsibilities, 95.11.01). However, consideration needs to be given to the following:

- During the personal interview, Mr. Lobusta reported the need to use a self-contained breathing apparatus (SCBA) for “double bottom” work. While the use of these devices may not appreciably increase the work of breathing, an individual who develops an acute asthmatic attack under conditions requiring the use of an SCBA (oxygen-poor atmospheres) may be at increased risk for a poor outcome.
- When out at sea, the medical facilities on board an average vessel may not be adequate to provide appropriate care for an acute asthmatic exacerbation. Severe asthmatic attacks require life-sustaining procedures such as endotracheal intubation and on occasion, mechanical ventilation. Asthma can be fatal if not treated immediately. The distance from and the time required to transport an individual having an acute asthmatic attack on a vessel at sea to the appropriate medical facilities on land are important factors in the decision regarding fitness for duty.
- Several of the duties listed for an Able Seaman require the use of a variety of chemical substances (e.g. grease, solvents, cleaning agents, de-greasers, paint, etc.), many of which are known or suspected asthma triggers in sensitized individuals. The potential for an Able Seaman's exposure to these asthma triggers is considerable.

Taken altogether, it is my opinion that Mr. Lobusta ought not to be considered fit to return to work as an Able Seaman. While the degree of impairment is mild, for the reasons stated above, it would be in the interest of all parties involved if he were to no longer be considered as capable of gainful employment as a seafarer. It is possible that he may perform adequately in another capacity, given a land-based assignment.

[19] (Stress in the original by Dr. David.)

As no settlement was reached despite the above findings, the Labor Arbiter ordered the parties to file their respective position papers.

On April 20, 2001, the Labor Arbiter rendered a decision^[20] ordering petitioners to pay Lobusta (a) US\$2,060 as medical allowance, (b) US\$20,154 as disability benefits, and (c) 5% of the awards as attorney's fees.

The Labor Arbiter ruled that Lobusta suffered illness during the term of his contract.

Hence, petitioners are liable to pay Lobusta his medical allowance for 120 days or a total of US\$2,060. The Labor Arbiter held that provisions of the Labor Code, as amended, on permanent total disability do not apply to overseas seafarers. Hence, he awarded Lobusta US\$20,154 instead of US\$60,000, the maximum rate for permanent and total disability under Section 30 and 30-A of the 1996 POEA Standard Employment Contract. The Labor Arbiter also awarded attorney's fees equivalent to 5% of the total award since Lobusta was assisted by counsel.^[21]

Lobusta appealed. The NLRC dismissed his appeal and affirmed the Labor Arbiter's decision. The NLRC ruled that Lobusta's condition may only be considered permanent partial disability. While Dr. David suggested that Lobusta's prospects as seafarer may have been restricted by his bronchial asthma, Dr. David also stated that the degree of impairment is mild. Said qualification puts Lobusta's medical condition outside the definition of total permanent disability, said the NLRC.^[22] Later, the NLRC also denied Lobusta's motion for reconsideration.

Unsatisfied, Lobusta brought the case to the CA under Rule 65 of the 1997 Rules of Civil Procedure, as amended. As aforesaid, the CA declared that Lobusta is suffering from permanent total disability and increased the award of disability benefits in his favor to US\$60,000, to wit:

WHEREFORE, the petition for certiorari is hereby GRANTED. The challenged resolution of the NLRC dated 20 June 2002 is MODIFIED, declaring [Lobusta] to be suffering from permanent total disability.

[Petitioners] are ORDERED to pay [Lobusta] the following:

- a) US\$2,060.00 as medical allowance,
- b) US\$60,000.00 as disability benefits, and
- c) 5% of the total monetary award as attorney's fees

x x x x^[23]

The CA faulted the NLRC for "plucking only particular phrases" from Dr. David's report and said that the NLRC cannot wantonly disregard the full import of said report. The CA ruled that Lobusta's disability brought about by his bronchial asthma is permanent and total as he had been unable to work since May 14, 1998 up to the present or for more than 120 days, and because Dr. David found him not fit to return to work as an able seaman.

Hence, this petition which raises two legal issues:

I.

WHETHER OR NOT THE POEA CONTRACT CONSIDERS THE MERE LAPSE OF MORE THAN ONE HUNDRED TWENTY (120) DAYS AS TOTAL AND PERMANENT DISABILITY.

II.

WHETHER OR NOT THERE IS LEGAL BASIS TO AWARD RESPONDENT
LOBUSTA ATTORNEY'S FEES.^[24]

Petitioners argue that the CA erred in applying the provisions of the Labor Code instead of the provisions of the POEA contract in determining Lobusta's disability, and in ruling that the mere lapse of 120 days entitles Lobusta to total and permanent disability benefits. The CA allegedly erred also in holding them liable for attorney's fees, despite the absence of legal and factual bases.

The petition lacks merit.

Petitioners are mistaken that it is only the POEA Standard Employment Contract that must be considered in determining Lobusta's disability. In *Palisoc v. Easways Marine, Inc.*,^[25] we said that whether the Labor Code's provision on permanent total disability applies to seafarers is already a settled matter. In *Palisoc*, we cited the earlier case of *Remigio v. National Labor Relations Commission*^[26] where we said (1) that the standard employment contract for seafarers was formulated by the POEA pursuant to its mandate under Executive Order No. 247^[27] "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith," and "to promote and protect the well-being of Filipino workers overseas"; (2) that Section 29 of the 1996 POEA Standard Employment Contract itself provides that all rights and obligations of the parties to the contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory; and (3) that even without this provision, a contract of labor is so impressed with public interest that the Civil Code expressly subjects it to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.^[28] In affirming the Labor Code concept of permanent total disability, *Remigio* further stated:

Thus, the Court has applied the Labor Code concept of permanent total disability to the case of seafarers. In *Philippine Transmarine Carriers v. NLRC*, seaman Carlos Nietes was found to be suffering from congestive heart failure and cardiomyopathy and was declared as unfit to work by the company-accredited physician. The Court affirmed the award of disability benefits to the seaman, citing *ECC v. Sanico*, *GSIS v. CA*, and *Bejerano v. ECC* 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 do. It does not mean absolute helplessness." It likewise cited *Bejerano v. ECC*, that in a disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.

The same principles were cited in the more recent case of *Crystal Shipping, Inc. v. Natividad*. In addition, the Court cited *GSIS v. Cadiz* and