

FIRST DIVISION

[G.R. No. 177907, August 29, 2012]

**FAIR SHIPPING CORP., AND/OR KOHYU MARINE CO., LTD.,
PETITIONERS, VS. JOSELITO T. MEDEL, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

In this Petition for Review on *Certiorari*^[1] under Rule 45, the Court is asked to reverse and set aside the Decision^[2] and Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 75893 dated November 20, 2006 and May 15, 2007, respectively. In the assailed Decision, the Court of Appeals held that the Second Division of the National Labor Relations Commission (NLRC) committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Decision^[4] dated July 31, 2002 in NLRC OFW (M) 99-09-01462 (CA No. 029790-01). In the assailed resolution, the Court of Appeals denied for lack of merit the Motion for Reconsideration^[5] of herein petitioners Fair Shipping Corporation and Kohyu Marine Co., Ltd. and the Partial Motion for Reconsideration filed by herein respondent Joselito T. Medel.

From the records of the case, we culled the following material facts:

On November 23, 1998, Medel was hired by Fair Shipping Corporation, for and in behalf of its foreign principal Kohyu Marine Co., Ltd. Under the Contract of Employment^[6] signed by Medel, the latter was employed as an Able Seaman of the vessel M/V Optima for a period of 12 months with a basic monthly salary of US\$335.00, plus fixed overtime pay of US\$136.00 and vacation leave with pay of two and a half (2.5) days per month. The contract expressly stated that the terms and conditions of the revised Employment Contract governing the employment of all seafarers, as approved per Department Order No. 33 and Memorandum Circular No. 55, both series of 1996 [the 1996 POEA SEC],^[7] were to be strictly and faithfully observed by the parties.

Medel boarded the M/V Optima on November 27, 1998 and commenced the performance of his duties therein.^[8] On March 1, 1999, while the M/V Optima was docked at the Port of Vungtao in Ho Chi Minh City, Vietnam, Medel figured in an unfortunate accident. During the conduct of emergency drills aboard the vessel, one of Medel's co-workers lost control of the manual handle of a lifeboat, causing the same to turn uncontrollably; and it struck Medel in the forehead. Medel was given first aid treatment and immediately brought to the Choray Hospital in Ho Chi Minh City on said date.^[9]

After undergoing surgical procedure to treat his fractured skull, Medel was discharged from the hospital on March 13, 1999. Medel's Discharge Summary

disclosed that he underwent the following treatment:

1/ Surgical procedure: An open wound, 5 cm long, in the left frontal region. Extend [of] the wound [up] to 10 cm. The underlying frontal bone is found completely shattered. The frontal sinus is broken. The fracture in the frontal bone extends beyond the midline to the right parietal bone. The fractured skull is depressed 1 cm. Frontal sinus is cleansed, its mucosa is cauterized. A Gelfoam is packed into the frontal sinus. The broken fragments of the frontal bone are removed. The remaining depressed frontal bone is elevated to normal position. The fractured fronto-parietal bone is gouged out. A rubber tube drain is placed into the wound. Skin is closed in 2 layers.

Post-op is uneventful. Left palpebral ptosis and dimmed vision are recorded. Eye examination shows scattered retinal hemorrhages. Surgical incision heals well. Left palpebral ptosis recovers nearly completely. Retinal hemorrhage is markedly reduced, however, left vision is not yet fully recovered.^[10]

Medel's attending physician then recommended his "[r]epatriation for further treatment (at the patient's request)" and that he should "[s]ee a neurosurgeon and an ophthalmologist in the Philippines."^[11]

Medel was repatriated to the Philippines on March 13, 1999 and was admitted to the Metropolitan Hospital on the said date. In a letter dated March 16, 1999, Dr. Robert D. Lim, the company-designated physician and Medical Coordinator of the Metropolitan Hospital, informed petitioners that

Medel was seen by a neurologist, an ENT specialist, and an ophthalmologist.^[12] Medel subsequently underwent a cranial CT scan and an ultrasound on his left eye, which was also injured during the accident.^[13] On April 22, 1999, a posterior vitrectomy was performed on Medel's left eye;^[14] and on July 14 and July 19, 1999, Medel's left eye was likewise subjected to two sessions of argon laser retinopexy.^[15] Dr. Lim then reported to petitioners that Medel's condition was re-evaluated on July 22, 1999 and, after consulting with the neurosurgeon at the Metropolitan Hospital, Medel was advised to undergo cranioplasty to treat the bony defect in his skull.^[16] On October 20, 1999, Medel was admitted to the hospital and underwent the said surgical procedure.^[17] On October 25, 1999, Dr. Daniel L. Ong, a neurologist at the Metropolitan Hospital, sent a report to Dr. Lim stating thus:

DEAR DR. LIM,

RE: DELAY OF CRANIOPLASTY OF LEFT FRONTAL SINUS OPEN DEPRESSED FRACTURE; S/P POST-CRANIOTOMY (MR. JOSELITO MEDEL)

THE REASON FOR THE DELAY IS DUE TO THE POOR SKIN CONDITION AND THE POTENTIAL INFARCTION IN THIS PARTICULAR AREA IF DONE TOO QUICKLY. THIS IS ALSO THE REASON FOR PROLONGED

AN[T]IBIOTIC COVERAGE AS PART OF THE INITIAL PREPARATORY TREATMENT, USUALLY SIX MONTHS WAIT BEFORE A CRANIOPLASTY IN THIS CASE.

I THINK PATIENT CAN RESUME SEA DUTIES WITHOUT ANY DISABILITY.

THANK YOU.

(SIGNED)

DANIEL ONG, M.D.^[18]

Months after, in a letter dated February 15, 2000, Dr. Lim informed petitioners of Medel's condition, the relevant portion of which states:

RE : MR. JOSELITO MEDEL MV OPTIMA FAIR SHIP. CORP.

: PATIENT WAS SEEN AND RE-EVALUATED FEBRUARY 11, 2000.

: HE WAS SEEN BY OUR NEUROLOGIST AND NEURO-SURGEON. HIS WOUND IS HEALED. HIS PERIMETRY RESULT WAS GIVEN TO OUR NEUROLOGIST AND HE OPINES THAT PATIENT IS NOW FIT TO WORK.

: HE WAS PRONOUNCED FIT TO RESUME SEA DUTIES AS OF FEBRUARY 11, 2000.

: HOWEVER, THE PATIENT REFUSED TO SIGN HIS CERTIFICATE OF FITNESS TO WORK.

: FOR YOUR PERUSAL.^[19]

In the interregnum, before Medel actually underwent the procedure of cranioplasty, he claimed from petitioners the payment of permanent total disability benefits. Petitioners, however, refused to grant the same.^[20] Consequently, on September 7, 1999, Medel filed before the Arbitration Branch of the NLRC a complaint^[21] against petitioners for disability benefits in the amount of US\$60,000.00, medical expenses, loss of earning capacity, damages and attorney's fees. The case was docketed as NLRC OFW (M) No. 99-09-01462. Medel claimed entitlement to permanent total disability benefits as more than 120 days had passed since he was repatriated for medical treatment but he was yet to be declared fit to work or the degree of his disability determined by the company-designated physician.

On July 30, 2001, the Labor Arbiter issued a Decision^[22] in favor of Medel, holding that:

Upon the records, this Office is more than convinced that [Medel] is entitled to a [sic] disability benefits which is equivalent to 120% of US\$50,000.00 or US\$60,000.00 or its peso equivalent at the [e]xchange rate prevailing at the time of its payment.

As held by [petitioners] to be an undisputed fact, [Medel] suffered injury that was sustained by him during the effectivity of his shipboard employment contract and while engaged in the performance of his contracted duties.

Upon [Medel's] arrival, [petitioners] referred [him] to the company designated physician at Metropolitan Hospital on March 13, 1999, with impression, "Head Injury with Open Fracture of the Left Frontal Bone: S/P Open Reduction & Internal Fixation of Frontal Bone and Sinus; Cerebral Concussion; Vitreous Hemorrhage, left eye secondary to trauma." Suggested procedure was Ultrasound of the left eye. Subsequently, [Medel] was referred to a neuro-surgeon. His cranial CT scan showed "Minimal Pneumocephalus; Inferior Frontal Region; Comminuted Fracture, Frontal Bone; Post craniotomy Defect, Left Frontal Bone; changed within the Sphenoid which may relate to previous hemorrhage and Negative for Mass effect nor Intracranial Intracerebral Hemorrhage." His ultrasound of the left eye confirmed the presence of Vitreous Hemorrhage. Suggestion was Vitrectomy, Left eye. On June 28, 1999, [Medel] was re-evaluated, however, the ophthalmologist [s]uggested Argon Laser Retinopexy since he was noted to have Wrinkled Macula and Areas of weakness in the Retina secondary to Trauma. He was then seen July 14, 1999 when he underwent first session of Argon Laser Retinopexy and for re-evaluation on July 19, 1999 for second session. On July 23, 1999, he was seen by the neurosurgeon who advised him [to undergo the procedure of] cranioplasty to cover the bony defect of the skull to be done [i]n October 1999.

With the foregoing, we are persuaded by [Medel's] arguments that the claim for disability benefits is not solely premised on the extent of his injury but also on the consequences of the same to his profession as a seafarer which was his only means of livelihood. We could imagine the nature of these undertakings of seafarers where manual and strenuous activities are part of the days work. Moreso, with the position of [Medel] being an ordinary seaman which primarily comprises the vessel manpower and labor. Thus, to us, we are convinced that [Medel] is entitled to the benefits under Section 20 B of the POEA Memorandum Circular No. 55 and Section 30 A thereof which was deemed incorporated to his POEA approved employment contract.

Further, the claim for attorney's fees is justified considering the above discussed circumstances which in effect has constrained [Medel] to hire the services of a legal counsel to protect his interest.^[23]

The Labor Arbiter decreed as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding [petitioners] jointly and severally liable to:

1) To pay [Medel] the amount of US\$60,000.00 or its peso equivalent at

the prevailing exchange rate at the time of payment, representing permanent and total disability; [and]

2) To pay [Medel] the equivalent amount of ten (10%) percent of the total judgment award, as and for attorney's fees;

All other claims are hereby dismissed for lack of merit.^[24]

Petitioners filed a Memorandum of Appeal^[25] before the NLRC, which was docketed as NLRC CA No. 029790-01. In their appeal, petitioners alleged that the disability compensation granted to Medel was improper because the same was not based on a disability assessment issued by the company-designated physician. As Medel was not disabled, they argued that he was not entitled to any compensation, including attorney's fees.

In its Decision dated July 31, 2002, the Second Division of the NLRC found merit in the petitioners' appeal and disposed of the same thus:

WHEREFORE, the appealed decision is SET ASIDE and a new one entered by ordering [Medel's] claim DISMISSED for lack of merit.^[26]

The NLRC ruled that under Section 20(B)(2) of the 1996 POEA SEC, the disability of a seafarer should be assessed by the company-designated physician. The employer shall be liable for the seafarer's medical treatment until the latter is declared fit to work or his disability is assessed. Should the seafarer recover, the NLRC posited that the contractual obligation of the employer should cease. However, if the seafarer is found to be incapacitated, the employer's contractual obligation shall terminate only after the latter pays the seafarer's disability benefits. Furthermore, the NLRC stated that the 120 days referred to in Section 20(B)(3) of the POEA SEC^[27] pertained to "the maximum number of days to which a seafarer who signed-off from the vessel for medical treatment is entitled to sickness wages."^[28] The NLRC ruled that there was no evidence to prove that Medel was disabled, other than his contention that his treatment had gone beyond 120 days. Medel was even declared fit to resume sea duty. Thus, the NLRC held that Medel had no basis for his claim of disability benefits.

Medel filed a Motion for Reconsideration^[29] of the above NLRC Decision but the same was denied in the NLRC Resolution^[30] dated November 21, 2002.

Medel, thus, filed a Petition for *Certiorari*^[31] before the Court of Appeals, which sought the reversal of the NLRC rulings for having been allegedly issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Medel's petition was docketed as CA-G.R. SP No. 75893.

On November 20, 2006, the Court of Appeals rendered the assailed decision, the dispositive portion of which provides: