

SECOND DIVISION

[G.R. No. 191606, August 01, 2012]

**DAMASO R. CASOMO, PETITIONER, VS. CAREER PHILIPPINES
SHIPMANAGEMENT, INC. AND/OR COLUMBIA SHIPMANAGEMENT LTD.,
RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

Challenged in this petition for review on *certiorari* is the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 102925 reversing and setting aside the Resolution^[2] of the National Labor Relations Commission (NLRC) which, in turn, reversed and set aside the Decision^[3] of the Labor Arbiter. The Labor Arbiter ruled against petitioner Damaso R. Casomo (Casomo), dismissing his complaint for permanent total disability benefits, reimbursement of medical and hospital expenses, damages and attorney's fees.

Pursuant to a Philippine Overseas Employment Agency (POBA) approved contract of employment dated 7 October 2005, Casomo was hired by respondent Career Philippines Shipmanagement, Inc. (Career Shipmanagement), for and in behalf of its foreign principal Columbia Shipmanagement, Ltd., as Ableseaman on board the vessel "YM DA NANG," for a period of nine (9) months with a basic monthly salary of US\$495.00. Prior to his employment, Casomo underwent a Pre-Employment Medical Examination (PEME) and was pronounced "Fit to Work" on board a vessel; he departed from the Philippines on 17 November 2005.

Sometime in January 2006, Casomo felt a lump forming on his right face. On 21 March 2006, when the vessel reached Nagoya, Japan, Casomo informed the captain of his condition who then ordered Casomo to undergo a medical check-up. The examining physician diagnosed Casomo to be suffering from "tumor of right lower jaw and secondary cystic infection" and recommended Casomo's disembarkation and repatriation to the Philippines for further medical examination.

In Manila, Dr. Nicomedes G. Cruz (Dr. Cruz), respondent Career Shipmanagement's physician, examined Casomo and ordered the latter to undergo a battery of tests. Results thereof indicated Casomo's condition as a case of *Amelohlastoma*. In layman's terms, Casomo had a serious case of an impacted wisdom tooth. Thereafter, Casomo went under the knife *via* a right *hemimandibulectomy* with mandibular reconstruction at the Medical Center Manila.

Significantly, Dr. Cruz declared Casomo's illness as not work-related. Nonetheless, even after the operation, Casomo was no longer hired by Career Shipmanagement, nor by any other ship company, as seafarer, specifically, an Ableseaman. Thus, Casomo claimed for permanent disability with Career Shipmanagement.

Career Shipmanagement denied Casomo's claim based on Dr. Cruz's finding that Casomo's illness was not work-related.

Not unexpectedly, Casomo filed a complaint before the NLRC for permanent disability benefits, reimbursement of medical and hospital expenses, moral and exemplary damages, attorney's fees and legal interest.

After the exchange of pleadings. Labor Arbiter Napoleon M. Menese dismissed Casomo's complaint for lack of merit. The Labor Arbiter did not find evidence to show that Casomo's *Ameloblastoma* was in any way connected to his work as an Ableseaman, much less the cause thereof

As previously adverted to, the NLRC reversed the Labor Arbiter and ordered Career Shipmanagement to pay Casomo permanent disability benefits in the amount of US\$60,000.00. The NLRC zeroed in on the fact that Casomo contracted the illness during his term of employment. More to the point for the NLRC, Casomo was found by Career Shipmanagement's designated physician as "Fit for Sea Service" during the FEME. In all, the NLRC ruled that considering Casomo fell ill during his term of employment, with

illnesses not listed in Section 32 of the POEA Standard

Employment Contract being disputably presumed as work-related,^[4] the burden of proving that Casomo's *Ameloblastoma* was not work-related rested with Career Shipmanagement.

In yet another ruling reversal, the Court of Appeals granted the petition for *certiorari* filed by Career Shipmanagement and found grave abuse of discretion in the NLRC's decision.

The appellate court held that Casomo failed to make a showing that his illness was work-related; Casomo did not establish a causal connection between his *Ameloblastoma* and his work as an Ableseaman, performing all operations connected with the launching of life-saving equipment and making security inspections of the ship.

Hence, this petition for review on *certiorari* positing the following issues:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN REVERSING THE DIVISION OF THE NLRC AND IN IGNORING THE OVERWHELMING EVIDENCE THAT SUPPORTS PETITIONER'S ENTITLEMENT TO MAXIMUM DISABILITY BENEFITS IN THE AMOUNT OF USD60,000.00.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE PETITIONER'S DISABILITY BENEFITS SOLELY BECAUSE THE COMPANY-DESIGNATED PHYSICIAN HAS DECLARED HIS ILLNESS AS NOT WORK RELATED.^[5]

We deny the petition. Casomo is not entitled to disability benefits since he failed to demonstrate that his illness, *Ameloblastoma*, was work-related.

Casomo insists that his illness is disputably presumed work-related as specified in Section 20(B)(4) of the POEA Standard Employment Contract. He lays the burden of proving otherwise on Career Shipmanagement. For Casomo, whose reasoning was favored by the NLRC, the fact that he fell ill during his employment coupled with the disputable presumption that his illness was work-related definitively trumps the declaration of Dr. Cruz that Casomo's illness was not work-related. Lastly, Casomo points out that Dr. Cruz's medical certification is self-serving and biased in favor of Career Shipmanagement, and thus, carries no evidentiary weight and value.

We are not persuaded.

To begin with, Casomo's bare allegation, with nary a linkage of his work as Ableseaman to his contraction of *Ameloblastoma* during his term of employment, hardly constitutes substantial evidence, *i.e.*, such evidence as a reasonable mind might accept as adequate to support a conclusion.^[6]

The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.^[7]

Contrary to the posturing of Casomo, the disputable presumption found in Section 20(B)(4) of the POEA Standard Employment Contract, that illnesses not listed in Section 32 thereof are work-related, did not dispense with the required burden of proof imposed on him as claimant. It remained incumbent upon Casomo to discharge the required quantum of proof of compensability. Awards of compensation cannot rest entirely on bare assertions and presumptions. The claimant must present evidence to prove a positive proposition.^[8]

In the POEA Standard Employment Contract, a work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." *Ameloblastoma* is not listed under Section 32-A on Occupational Diseases. On this score, Casomo's claim is without stanchion.

As regards compensability of occupational diseases, Section 32-A of the same Standard Employment Contract lists the conditions before an occupational disease, and the resulting death or disability therefrom, may be compensated:

SEC. 32-A. Occupational Diseases. —

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

- (1) The seafarer's work must involve the risks described herein;
- (2) The disease was contracted as a result of the seafarer's exposure to the described risks;
- (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;
- (4) There was no notorious negligence on the part of the seafarer.

Clearly, it is not enough that a seafarer contracts the illness during his term of employment or such illness renders him or her permanently disabled: The seafarer must demonstrate that his work as such involved risks and within a period of exposure thereto resulted in his contraction of the disease. Moreover, the seafarer should not be guilty of notorious negligence in contracting the disease.

Section 20(B) of the POEA Standard Employment Contract maps out the compensation and benefits for injury or illness, to wit:

SECTION 20. COMPENSATION AND BENEFITS

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;
2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

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.

5. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

Section 20(B), in relation to Section 32-A, covers various situations and requires the concurrence of several conditions before a disease, and the resultant disability of a seafarer, ought to be compensated by the employer. The text of the foregoing sections mandates that the seafarer, in this instance, Casomo, prove his claim of a work-related illness resulting in his permanent disability.

Along the same vein, a disputably presumed work-related illness under the very same POEA Standard Employment Contract must still be proven by the seafarer claiming permanent disability benefits.

In the recent case of *Quizora v. Denholrn Crew Management (Phil.), Inc.*,^[9] we categorically declared, thus:

[Petitioner cannot simply rely on the disputable presumption provision mentioned in Section 20 (B) (4) of the 2000 POEA-SEC. As he did so without solid proof of work-relation and work-causation or work-aggravation of his illness, the Court cannot provide him relief.

[T]he disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, **he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.** (Emphasis supplied)

Magsaysay Maritime Corporation v. National Labor Relations Commission^[10] schools us, thus:

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. **In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.** (Emphasis supplied)

In the case at bar, Casomo simply asserts that: (1) he contracted his *Ameloblastoma* during his term of employment, (2) which illness is disputably presumed work-related, and (3) the *Ameloblastoma* has resulted in his permanent disability. Casomo does not elaborate on the nature of his work as an Ableseaman and his consequent exposure, if any, to certain risks which resulted in, or aggravated, his *Ameloblastoma*. Even if we were to subscribe to Casomo's arguments, his misplaced reliance that his illness is disputably presumed work-related, does not amply link his first and third assertions and lead us to the conclusion that his *Ameloblastoma* is compensably work-related.

Indeed, we have held on more than one occasion that to establish whether the illness is work-related, probability-not certainty—is the touchstone.^[11] The probability referred to must be founded on facts and reason.

Nowhere in Casomo's petition before us, or even his position paper before the NLRC, does he attempt to demonstrate a causal connection between his work as an Ableseaman and his *Ameloblastoma*. In the two

pleadings, Casomo asseverates:

21. The symptoms of [Casomo's] disease (ameloblastoma) were seen only during the course of the third contract while he was on board the vessel.

22. Dr. Nicomedes Cruz, the company-designated physician, failed to discuss what could have caused the illness. While Dr. Cruz himself admitted the illness is a rare disorder, he merely stated that [Casomo's] illness is not work-related, without showing any proof or studies or the reasons for the said findings.

23. **The truth is nobody knows yet what the cause of ameloblastoma is.** Hence, it could not be determined in the present case whether it is work-related or not.^[12] (Emphasis supplied)

x x x x

Before embarking, [petitioner] was in perfect health, x x x [Petitioner] was given a clean bill of health by the doctor when a medical clearance was issued certifying him as "fit, to work[.]" There was never any indication or symptom that he is suffering from such illness. It was only on January 2006 or barely three (3) months from date of departure or a total of almost four (4) years from the time [petitioner] was first employed as seafarer by [respondents] that he started feeling the symptoms of Ameloblastoma (sic).

[T]it is very apparent from the physical condition of [petitioner] that the chance for him to go back to his former profession is very remote. The medical treatment must be on continuous basis as he is required to receive maintenance and medications. In addition thereto, his engagement in a strenuous physical activity would certainly endanger his life he having suffered continuous pain at any time of the day. It is even advisable that his place of work must be accessible to medical facilities.^[13]

A quick perusal of Section 32 of the POEA Standard Employment Contract, in particular the *Schedule of Disability or Impediment for Injuries Suffered and Diseases including Occupational Diseases or Illnesses Contracted*,^[14] and the *List of Occupational Diseases*,^[15] easily reveals the serious and grave nature of the injuries, diseases and/or illnesses contemplated therein, which are clearly specified and identified.

We are hard pressed to adhere to Casomo's position as it would result in a preposterous situation where a seafarer, claiming an illness not listed under Section 32 of the POEA Standard Employment Contract which is then disputably presumed as work-related and is ostensibly not of a serious or grave nature, need not satisfy the conditions mentioned in Section 32-A of the POEA Standard Employment Contract. In stark contrast, a seafarer suffering from an occupational disease would still have to satisfy four (4) conditions before his or her disease may be compensable.

Moreover, we note that Casomo's pleadings merely lift general medical summaries from the internet to explain the recurrence and cause of *Ameloblastoma*:

General Discussion

Ameloblastoma is a rare disorder of the jaw involving abnormal tissue growth. The resulting tumors or cysts are usually not malignant (benign) but the tissue growth may be aggressive in the involved area. On occasion, tissue near the jaws, such as around the sinuses and eye sockets, may become involved as well. The tissues involved are most often those that give rise to the teeth so that *ameloblastoma* may cause facial distortion. Malignancy is uncommon as are metastases, but they do occur.

Causes

The cause of *Ameloblastoma* is not understood. It has been suggested that it may be caused by dental irritation during the growth of teeth, the pulling of teeth or in some cases by cavities in the teeth. Other causes may include injury to the mouth or jaw, infections of the teeth or gums, or inflammation of these same areas.