698 Phil. 437

SECOND DIVISION

[G.R. No. 195168, November 12, 2012]

BENJAMIN C. MILLAN, PETITIONER, VS. WALLEM MARITIME SERVICES, INC., REGINALDO A. OBEN AND/OR WALLEM SHIPMANAGEMENT,[1] LTD., RESPONDENTS.

R E S O L U T I O N

PERLAS-BERNABE, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated August 20, 2010 and Resolution[3] dated January 13, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 104924 which decreed petitioner Benjamin C. Millan entitled only to partial disability benefits in the sum of US$7,465.00 plus ten percent (10%) thereof as attorney's fees, or its peso equivalent at the time of payment.

The facts are undisputed.

Petitioner Benjamin C. Millan has been under the employ of Wallem Maritime Services, Inc. as a seafarer since May 1981.[4] On October 19, 2002, he was deployed by the latter for its foreign principal, Wallem Shipmanagement, Ltd., as a messman with a basic salary of US$405.00 a month on board M/T "Front Vanadis."[5] On February 13, 2003, he slipped while carrying the ship's provisions and injured his left arm. He was examined at St. Paul's Surgical Clinic in Yosu City, South Korea where he was diagnosed to have suffered "fracture on left ulnar shaft."[6] Hence, he was medically repatriated on February 26, 2003.[7] On February 28, 2003, he proceeded to the Manila Doctor's Hospital where he consulted Dr. Ramon S. Estrada, the company-designated physician, and underwent an operation on March 3, 2003.[8] After his discharge, he went through a series of consultations and physical therapy sessions from May 6, 2003 until July 2, 2003.[9] On July 5, 2003, Dr. Estrada reported that petitioner had completed his physical therapy program but will have to undergo a physical capacity test on August 28, 2003[10] to evaluate his fitness to work.[11] Instead, on August 29, 2003, petitioner filed a complaint[12] against respondents Wallem Maritime Services, Inc., its President/Manager Reginaldo A. Oben, and Wallem Shipmanagement, Ltd. for medical reimbursement, sickness allowance, permanent disability benefits, compensatory damages, exemplary damages and attorney's fees.

On September 1, 2003, petitioner consulted Dr. Rimando C. Saguin, an orthopedic surgeon, who diagnosed him as suffering from Philippine Overseas Employment Administration (POEA) Disability Grade 11 and elbow bursitis which rendered him "unfit to work at the moment."[13] On September 10, 2003, petitioner sought the opinion of Dr. Nicanor F. Escutin who assessed his condition as a partial permanent

disability with POEA Disability Grade 10, 20.15%. Dr. Escutin also opined that petitioner was suffering from "loss of grasping power of small objects in one hand, and inability to turn forearm to pronation or supination. The period of healing remains undetermined. The patient is now unfit to go back to work at sea at whatever capacity."[14]

In their defense, respondents denied any liability contending that proper treatment and management were afforded petitioner but he deliberately ignored his medical program by failing to appear on his scheduled appointment with the company-designated physician. Respondents also claim that petitioner was paid his sickness allowance in full, and his medical examinations, tests and check-ups were shouldered by the company.[15]

The Labor Arbiter's Ruling

In the Decision[16] dated September 27, 2006, the Labor Arbiter held that since the company-designated physician failed to make any pronouncement on petitioner's fitness to resume sea service within 120 days as required by law, his disability is deemed permanent and total. Consequently, respondents Wallem Maritime Services, Inc. and Wallem Shipmanagement, Ltd. were found jointly and severally liable to pay petitioner US$60,000.00 or its peso equivalent representing his permanent and total disability compensation plus ten percent (10%) thereof or US$6,000.00 as attorney's fees. Petitioner's claim for medical reimbursement and sickness allowance, however, were denied for lack of merit.

The NLRC Ruling

On appeal, the National Labor Relations Commission (NLRC) reversed and set aside the findings of the Labor Arbiter, ruling that the assessments made with respect to the degree of petitioner's disability by the two independent doctors who examined him only once cannot prevail over the extensive medical examinations conducted by the company-designated physician, Dr. Estrada. It pointed out that under the POEA Standard Employment Contract, the post-employment medical examination and degree of disability must be performed and declared by the company-designated physician.[17]

Aggrieved, petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.

The CA Ruling

In its assailed Decision[18] dated August 20, 2010, the CA set aside the NLRC's conclusions and rendered a new judgment finding petitioner as suffering from partial permanent disability Grade 10. It held that while petitioner's disability has exceeded 120 days, there was no showing that his "earning power was wholly destroyed and he is still capable of performing remunerative employment."[19] Thus, it ordered respondent manning agency and its principal liable to pay petitioner US$7,465.00 plus 10% thereof as attorney's fees by way of partial disability benefits.

Hence, the instant petition[20] based on the sole issue of whether or not the CA

committed reversible error in granting petitioner only partial permanent disability Grade 10 despite his inability to work for more than 120 days.

In their Comment,[21] respondents averred that the determination made by the CA on the degree of petitioner's disability was in accordance with the Schedule of Disability Allowances under Section 32 of the POEA-Standard Employment Contract (POEA-SEC), hence, should be upheld.

The Court's ruling

There is no merit in this petition.

A seafarer's inability to resume his work after the lapse of more than 120 days from the time he suffered an injury and/or illness is not a magic wand that automatically warrants the grant of total and permanent disability benefits in his favor.

In *Vergara v. Hammonia Maritime Services, Inc.*,[22] the Court elucidated on the seeming conflict between Paragraph 3, Section 20(B)[23] of the POEA-SEC (Department Order No. 004-00) and Article 192 (c)(1)[24] of the Labor Code in relation to Section 2(a), Rule X[25] of the Amended Rules on Employees Compensation, thus:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. (Italics in the original)

Applying *Vergara,* the Court in the recent case of *C.F. Sharp Crew Management, Inc. v. Taok*[26] enumerated the following instances when a seafarer may be allowed to pursue an action for total and permanent disability benefits, to wit:

> (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;