

SECOND DIVISION

[G.R. No. 185352, August 10, 2011]

**COASTAL SAFEWAY MARINE SERVICES INC., PETITIONER, VS.
ELMER T. ESGUERRA, RESPONDENT.**

DECISION

PEREZ, J.:

Compliance with the mandatory reporting requirements for the claim of disability benefits and sickness allowance under the *Philippine Overseas Employment Administration Standard Employment Contract Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels* (POEA-SEC) is central to this Rule 45 petition for review on *certiorari*, primarily assailing the 29 August 2008 Decision rendered by the then Seventh Division of the Court of Appeals (CA) in CA-G.R. SP No. 90298,^[1] the dispositive portion of which states:

WHEREFORE, the petition is granted. The Resolutions dated June 30, 2004 and September 30, 2004 of public respondent NLRC are set aside. Accordingly, private respondents [Coastal Safeway Marine Services, Inc., Benedicto C. Morcilla and Canada and Middle East General Trading] are ordered to pay petitioner [Elmer T. Esguerra], jointly and solidarily, his sickness allowance of US\$3,200.00 and disability benefits of US\$20,900.00 which may be paid in Philippine Currency equivalent to the exchange rate prevailing during the time of payment.

SO ORDERED.^[2]

The Facts

A seafarer since 1991, respondent Elmer T. Esguerra (Esguerra) applied for placement with petitioner Coastal Safeway Marine Services, Inc. (CSMSI) sometime in 2003. Found fit for work during the pre-employment medical examination conducted by the company-designated physician,^[3] Esguerra was hired by the CSMSI as Third Mate for the M/V Mr. Nelson, an ocean-going vessel under the flag of the United Arab Emirates (UAE) owned by its foreign principal, Canada & Middle East General Trading (CMEGT). Subject to the provisions of the POEA-SEC, the contract of employment executed by the parties on 9 May 2003 provided a term of one (1) year and a basic monthly salary of US\$800.00 for a 48-hour work-week, with provisions for overtime pay and vacation leave with pay.^[4] Rather than the aforesaid vessel, however, it appears that, on 13 May 2003, Esguerra, as Second Officer, eventually boarded the vessel M/V Gondwana which was likewise manned by CSMSI on behalf of Nabeel Shipmanagement Ltd. Fze. (NSLF).^[5]

On 28 June 2003 or after forty six (46) days of shipboard employment, Esguerra requested medical attention for back and chest pains while M/V Gondwana was docked at Port Jebel Ali, UAE. Examined on 5 July 2003 at the Jebel Ali Medical Centre, Esguerra was declared "not fit for work until complete cardiac evaluation is done" and "advised to rest until then" by Dr. Zarga S. Tulmar.^[6] Despite the normal results of the serology, hematology, biochemistry and x-ray tests administered upon him,^[7] however, Esguerra insisted on going home on the ground that he had been rendered unfit for work. Alleging that he had yet to receive his salary for June 2003 and that his employer was making him shoulder his repatriation expenses as a consequence of his failure to finish his contract, Esguerra also sought assistance from the Jebel Ali police/coastguard regarding his predicament.^[8] Subsequent to his arrival in the Philippines on 7 July 2003, Esguerra went to the Philippine Heart Center (PHC), the Philippine Orthopedic Hospital (POH) and the Philippine General Hospital (PGH) for medical evaluation and treatment.

Having consulted with Dr. Efren R. Vicaldo, a Doctor of Internal Medicine and Cardiology at the PHC as well as Dr. Rimando C. Saguin, an Orthopedic Surgeon at the POH, Esguerra further underwent diagnostic tests and was prescribed various medications at the PGH for "chronic stable angina."^[9] On 16 July 2003, Esguerra filed against CSMSI, its president, Benedicto C. Morcilla (Morcilla), and CMEGT, the complaint for medical reimbursement, sickness allowance, permanent disability benefits, damages and attorney's fees which was docketed as NLRC-OFW Case No. (M) 03-07-1784-00 before the arbitral level of the National Labor Relations Commission (NLRC).^[10] Subsequent to the filing of said complaint, Dr. Vicaldo issued a medical certificate dated 18 July 2003, diagnosing Esguerra to be afflicted with "Coronary Artery Disease, Stable angina pectoris" and declaring him unfit for work, with an "Impediment Grade VII (41.8%)."^[11] On 29 July 2003, Dr. Saguin also issued a medical certification stating that, as a consequence of his "moderate rigidity with 2/3 loss of motion and loss of lifting power of the trunk," Esguerra was then "unfit to work" with an Impediment Grade VIII.^[12]

In support of his complaint, Esguerra alleged, among other, matters, that he was repatriated for medical reasons on account of his work-related/aggravated ailment; that despite being apprised of his intention to submit himself for medical examination, CSMSI failed to refer him to a company-designated physician, and insisted that he was fit for work; and, that left with no choice but to seek medical attention on his own at the PGH, PHC and POH, he was constrained to file his complaint for disability benefits, sickness allowance, damages and attorney's fees.^[13] In refutation, CSMSI, Morcilla and CMEGT averred that the tests administered on Esguerra at the Jebel Ali Medical Centre revealed that he was in good health; and, that disregarding the finding that he continued to be fit for work, Esguerra insisted on his repatriation and filed his complaint without submitting himself to a post-employment medical examination within three (3) working days upon his return.^[14] Finding in favor CSMSI, Morcilla and CMEGT, Labor Arbiter Florentino R. Darlucio went on to render the 29 January 2004 Decision, dismissing the complaint on the ground that Esguerra failed to prove his disability and to submit himself to a post-employment medical examination by a company-designated physician, pursuant to Section 20-B of the POEA SEC.^[15]

With the affirmance of the Labor Arbiter's decision in the 30 June 2003 Resolution

issued by the NLRC's First Division in NLRC NCR CA No. 039292-04,^[16] Esguerra filed the petition for *certiorari* docketed before the CA as CA-G.R. SP No. 90298. On 29 August 2008, the CA's Seventh Division rendered the herein assailed decision reversing the NLRC's 30 June 2003 resolution, upon the following findings and conclusions, *viz.*: (a) the medical certifications issued by Drs. Vicaldo and Saguin indicate that respondent is entitled to temporary disability benefits corresponding to Impediment Grade VII (41.8%) which was assessed as a consequence of the illness he suffered during the period of his employment; (b) the post-employment medical examination by a company-designated physician under POEA Memorandum Circular No. 055-96 (*Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*) is not absolute and admits of exceptions; (c) petitioner's failure to refer him to a company-designated physician justified respondent's resort to the physicians who declared him "unfit for work" and assessed his Impediment Grade as aforesaid; and, (d) respondent is entitled to a sickness allowance equivalent to four months' salary.^[17]

CSMSI's motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's second assailed Resolution dated 11 November 2008,^[18] hence, this petition.

The Issues

CSMSI seeks the reversal of the CA's assailed resolutions on the following grounds, to wit:

- 1. The ruling of the Court of the Court of Appeals reversing and setting aside the findings of fact and conclusions of law of Labor Arbiter Florentino R. Darlucio, which was affirmed *in toto* by the National Labor Relations Commission (NLRC), First Division, is contrary to the evidence on record and runs afoul with prevailing jurisprudence.**
- 2. The Court of Appeals misappreciated the evidence and applied the POEA Standard Employment Contract of 1996 instead of the Revised Terms and Conditions for Seafarers on Board Ocean-Going vessels, which is part and parcel of the Contract of Employment entered into between Esguerra and the petitioner on May 9, 2003.**^[19]

The Court's Ruling

We find the petition impressed with merit.

Viewed in light of the fact that Esguerra's contract of employment was executed on 9 May 2003, CSMSI correctly faults the CA for applying POEA Memorandum Circular No. 055-96 instead of the 2000 POEA-SEC which took effect on 25 June 2000. Deemed written in the seafarer's contract of employment,^[20] the 2000 POEA-SEC - like its predecessor - was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels.^[21] Anent

a seafarer's entitlement to compensation and benefits for injury and illness, Section 20-B (3) thereof provides as follows:

"Section 20-B.Compensation and Benefits for Injury and Illness. --

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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.E

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. (Emphasis added.)

The foregoing provision has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability,^[22] whether total or partial, due to either injury or illness, during the term of the latter's employment.^[23] Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts.^[24] Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice^[25] regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.^[26] For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation.^[27] Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC.^[28]

There is no dispute regarding the fact that Esguerra had altogether failed to comply with the above-discussed mandatory reporting requirement. Beyond his bare assertion, however, that CSMSI "never gave him referrals to continue his medications as recommended by the foreign doctor" despite his call on 8 July 2003 "to inform them that he will report the next day in order to submit his medical evaluation abroad," Esguerra did not present any evidence to prove justification for his inability to submit himself to a post-employment medical examination by a company-designated physician. If a written notice is required of a seafarer who is