

FIRST DIVISION

[G.R. No. 176884, October 19, 2011]

CARMELITO N. VALENZONA, PETITIONER, VS. FAIR SHIPPING CORPORATION AND/OR SEJIN LINES COMPANY LIMITED, RESPONDENTS.

DECISION

DEL CASTILLO, J.:

"Permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days."^[1] On the other hand, "[p]ermanent 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."^[2]

This Petition for Review on *Certiorari* assails the January 17, 2007 Decision^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 96303 which dismissed the Petition for *Certiorari* filed by petitioner Carmelito N. Valenzona (petitioner). Also assailed is the February 28, 2007 Resolution^[4] denying the motion for reconsideration.

Factual Antecedents

On May 5, 2001, respondent Fair Shipping Corporation, for and on behalf of its principal, respondent Sejin Lines Company Limited, hired petitioner as 2nd Assistant Engineer aboard its vessel M/V Morelos for a duration of nine months.^[5] Before his embarkation on May 23, 2001,^[6] he was declared medically "fit to work."^[7]

However, while aboard the vessel on September 29, 2001, petitioner complained of chest pain.^[8] He was thus brought to *Centro Medico Quirurgico Echauri* in Mexico where he was confined up to October 6, 2001 and diagnosed with "hypertensive crisis, high blood pressure."^[9]

A day after his repatriation to the Philippines on October 8, 2001,^[10] petitioner was examined by Dr. Nicomedes G. Cruz (Dr. Cruz), the company-designated physician who diagnosed his illness as hypertension.^[11] Dr. Cruz continuously treated petitioner for six months, *i.e.*, from October 9, 2001 until April 25, 2002.^[12]

On April 18, 2002, however, petitioner consulted another doctor, a certain Dr. Mapapala at the Jose Reyes Memorial Medical Center who diagnosed him with "Hypertensive Cardiovascular Disease".^[13] Considering his prolonged sickness,

petitioner, on April 18, 2002, through Atty. Anastacio P. Marcelo, wrote a letter^[14] to respondents demanding payment of the balance of his sickness allowance and permanent disability benefits. However, same went unheeded.^[15]

Thereafter, or on April 25, 2002, Dr. Cruz issued a certification declaring petitioner as fit to work.^[16]

Unconvinced, on April 27, 2002, petitioner consulted Dr. Rodrigo F. Guanlao, an Internist-Cardiologist at the Philippine Heart Center who diagnosed him with "Ischemic heart disease, Hypertensive cardiovascular disease and congestive heart failure" and also declared him unfit to work in any capacity.^[17]

Hence, petitioner filed a complaint for recovery of disability benefits, sickness allowance, attorney's fees and moral damages.^[18]

Ruling of the Labor Arbiter

On January 31, 2003, the Labor Arbiter^[19] rendered a Decision^[20] the dispositive portion of which reads as follows:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered ordering the respondents in solidum to pay complainant in peso equivalent, the following amount:

1. P21,581.39 as the balance of his sickness allowance; and
2. US\$809.00 his one (1) month pay as penalty.

SO ORDERED.^[21]

The Labor Arbiter awarded sickness allowance to petitioner equivalent to four months of his basic wage^[22] pursuant to the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels^[23] (or the POEA's^[24] Standard Employment Contract) and petitioner's Collective Bargaining Agreement (CBA).^[25] Records however showed that petitioner already received partial payment of his sickness allowance, hence he is entitled only to the remaining balance of P21,581.39.^[26]

Anent petitioner's claim for disability benefits, the Labor Arbiter opined that he is not entitled thereto because under the CBA, said benefits can be claimed only for disability resulting from accidents and not due to illness.^[27] The Labor Arbiter also held that even under the POEA Standard Employment Contract, particularly Section 20, paragraph B thereof, petitioner is not entitled to disability benefits since he was declared fit to work by the company-designated physician. Corollarily, the Labor Arbiter found the assessment of Dr. Cruz deserving of more credence than the assessments of the private physicians consulted by petitioner because the former treated petitioner more extensively.^[28] Nonetheless, the Labor Arbiter noted that respondents failed to deploy petitioner even after he was declared fit to work; thus, the respondents were ordered to pay petitioner his one-month salary as penalty

therefor.^[29]

Ruling of the National Labor Relations Commission (NLRC)

Both parties filed their appeal to the NLRC. On May 26, 2006, the NLRC rendered its Decision^[30] the dispositive portion of which reads:

WHEREFORE, complainant's appeal is dismissed for lack of merit. On the other hand, respondents' appeal is granted. The Labor Arbiter's award of P21,581.39 by way of balance of the sickness allowance is deleted as the same had been extinguished by payment, while the award of US\$809.00 as a penalty is set aside for lack of factual and legal basis.

SO ORDERED.^[31]

The NLRC affirmed the findings of the Labor Arbiter that petitioner is not entitled to disability benefits because the CBA provision awarding the same refers to permanent disability suffered by the seafarer resulting from an accident and not from an illness.^[32] As such, the NLRC found as irrelevant the issue of whether the company-designated physician's assessment of petitioner's disability deserves credence.^[33]

As regards the sickness allowance, the NLRC noted that during the pendency of the case, respondents had already paid the remaining amount of P21,581.39. Consequently, respondents' obligation to pay the same had been extinguished.^[34]

Anent the amount of US\$809.00 imposed upon the respondents as penalty for their failure to re-deploy petitioner, the NLRC ruled that the same is without factual and legal basis. The NLRC held that petitioner is a contractual employee; consequently, after the expiration of his contract, the respondents were not duty-bound to deploy him absent a new contract.^[35]

Petitioner filed a motion for reconsideration^[36] but same was denied in the Resolution^[37] dated July 31, 2006. Petitioner thus filed a Petition for *Certiorari*^[38] with the CA.

Ruling of the Court of Appeals

On January 17, 2007, the CA rendered its Decision^[39] denying the petition and affirming the Decision of the NLRC. The CA concurred with the findings of the Labor Arbiter and the NLRC that petitioner is not entitled to disability benefits under the CBA as the same referred to disabilities caused by accidents and not by illness.^[40] The CA further ruled that even under the POEA Standard Employment Contract, petitioner is still not entitled to disability benefits because he was declared fit to work by the company-designated physician.^[41] The CA found the evaluation of Dr. Cruz more accurate since he treated petitioner for more than six months^[42] whereas the physicians consulted by petitioner examined him for only one day.

The dispositive portion of the CA Decision reads:

WHEREFORE, the petition is DENIED DUE COURSE. The decision of the NLRC is AFFIRMED.^[43]

Petitioner moved for reconsideration^[44] but same was denied in the Resolution^[45] dated February 28, 2007.

Hence, this Petition.

Issue

The main issue raised by both parties is whether petitioner is entitled to receive permanent disability benefits as well as attorney's fees.

The parties' arguments.

Petitioner insists that he is entitled to permanent disability benefits because he was declared unfit to work by his private physicians who are expert cardiologist vis-à-vis Dr. Cruz who is a general and cancer specialist.^[46] More significantly, he claims that the assessment of Dr. Cruz that he is fit to work was issued after the lapse of 120 days from the date of his repatriation, as such his disability is considered total and permanent.^[47]

On the other hand, respondents argue that petitioner is not entitled to receive permanent disability benefits because he was assessed fit to work by the company-designated physician^[48] whose evaluation is more accurate because he treated petitioner for more than six months.^[49] Respondents also claim that the mere fact that he was unable to work for more than 120 days does not automatically entitle him to total permanent disability benefits.^[50] They argue that the duration of disability is not relevant for purposes of determining disability benefits^[51] and that petitioner's degree of disability and amount of disability benefits should be based on the Schedule of Disability under Section 32 of the POEA contract^[52] as assessed by the doctor and not by the mere lapse of 120 days.^[53]

Our Ruling

The petition is meritorious.

Petitioner is entitled to permanent disability benefits.

a) The certification by the company-designated physician that petitioner is fit to work was issued after 199 days or more than 120 days from the time he was medically repatriated to the Philippines.

Petitioner's Employment Contract^[54] specifically provides that the same shall be deemed an "integral part of the Standard Terms and Conditions Governing the

Employment of Filipino Seafarers On Board Ocean-Going Vessels" otherwise known as the POEA Standard Employment Contract. Section 20(B) of the POEA Standard Employment Contract provides:

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x

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.

x x x x

The Labor Code's provision on permanent total disability applies with equal force to seafarers.^[55] Article 192 (c) (1) of the Labor Code provides, *viz*;

Art. 192. Permanent total disability. - x x x

x x x x

(c) The following disabilities shall be deemed **total and permanent**:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

x x x x^[56]

Thus, in *Quitoriano v. Jebsens Maritime, Inc.*,^[57] we held that:

Thus, Court has applied the Labor Code concept of permanent total disability to the case of seafarers. x x x

x x x x

There are three kinds of disability benefits under the Labor Code, as amended by P.D. No. 626: (1) temporary total disability, (2) permanent total disability, and (3) permanent partial disability. Section 2, Rule VII of the Implementing Rules of Book V of the Labor Code differentiates the disabilities as follows:

Sec. 2. *Disability*. - (a) A total disability is temporary if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period not exceeding 120 days, except as otherwise provided for in Rule