677 Phil. 262

THIRD DIVISION

[G.R. No. 192686, November 23, 2011]

FIL-STAR MARITIME CORPORATION, CAPTAIN VICTORIO S. MIGALLOS AND GRANDSLAM ENTERPRISE CORPORATION, PETITIONERS, VS. HANZIEL O. ROSETE, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the March 23, 2010 Decision[2] and the June 8, 2010 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 103256, which reversed the October 17, 2007 Resolution[4] of the National Labor Relations Commission (*NLRC*) and ordered the reinstatement of the May 21, 2007 Decision[5] of the Labor Arbiter (LA), awarding disability benefits to respondent Hanziel Rosete (*respondent*).

In 2005, petitioner Fil-Star Maritime Corporation (*Fil-Star)*, the local manning agency of co-petitioner Grandslam Enterprise Corporation (*Grandslam*), hired respondent as third officer on board the ocean-going vessel "M/V Ansac Asia." He was in charge of the loading and unloading operations of the vessel's cargo primarily consisting of soda ash in bulk. Respondent stated that the nature of his work exposed him to minute particles of soda ash during the loading and unloading operations. On November 22, 2005, respondent finished his contract and returned to the Philippines.

Thereafter, the petitioners re-hired respondent to work as second officer on their vessel for a period of nine (9) months. On January 5, 2006, respondent underwent a pre-employment medical examination (*PEME*) with First Medical Team Health Care Specialist Group,[6] the company accredited physician, and was pronounced "fit to work." On board the vessel, he was tasked to make an inventory of the vessel's property for annual inspection. According to respondent, he worked diligently and oftentimes worked odd hours just to familiarize himself with his new job. He averred that overtime work and the violent motions of the vessel due to weather inclemency caused undue strain to his eyes and his physical well-being.

On February 14, 2006 or a little over a month from his embarkation, respondent experienced an abrupt blurring of his left eye. He reported it to his captain and was advised to do an eye wash to relieve his pain until they reached Chiba, Japan. After the vessel arrived in Chiba, respondent was not able to seek medical advice because he was tasked to man the ship's navigation equipment. Five days later, respondent was able to receive medical attention in Kawasaki, Japan. Respondent was diagnosed with Central Retinal Vein Occlusion and immediately underwent three rounds of laser surgery on February 28, 2006, March 2, 2006 and March 4, 2006.

On March 9, 2006, respondent was declared fit for travel and was subsequently repatriated to the Philippines. Upon arrival in Manila, respondent went to the Metropolitan Hospital but could not get immediate treatment. On March 19, 2006, he experienced severe pain in his left eye so he insisted that he be admitted to the hospital. Respondent underwent another series of laser surgery on March 22 and 25, April 6, 18, and 25, 2006.

On August 11, 2006, Dr. Antonio Say declared respondent's left eye to be legally blind with poor possibility of recovery. Relevant portions of the medical certificate read:

> A. Left eye is legally blind
> B. Partial permanent disability
>
> - Partial because the visual activity of the right eye is 20/20.
> - It is permanent because the poor visual activity of the left eye, hand movement, has poor prognosis for visual recovery.[7]

The petitioners denied his claim for permanent total disability and only rated his incapacity as Grade 7. Respondent stressed that, under their Collective Bargaining Agreement (*CBA*), he should be considered legally blind meriting entitlement to permanent total disability benefits in the sum of US$105,000.00 for being unable to perform his job for more than 120 days from his repatriation.

Thus, on August 29, 2006, respondent filed a complaint against Fil-Star, Capt. Victorio S. Migallos and Grandslam for disability benefits, damages and attorney's fees.

The petitioners averred that after almost a month aboard the vessel, respondent complained of a sudden blurring of his left eye. They referred him to the Honmoku Hospital where a Dr. Yasuhiko Tomita diagnosed him with Central Retinal Vein Occlusion, left eye and Neo-Vascular Glaucoma, left eye, suspicion. After his repatriation, they immediately referred him to the Metropolitan Medical Center where he was treated and underwent a series of Panretinal Photocoagulation Session to prevent further neovascular formation. They shouldered the expenses for all these procedures. They, however, argued that respondent was not qualified for disability benefits, damages and attorney's fees because his illness was not an occupational disease or work-related.

On May 21, 2007, Labor Arbiter Pablo C. Espiritu, Jr. (*the LA*) ruled in favor of respondent.[8] The decretal portion reads:

> WHEREFORE, premises considered, respondents Filstar Maritime Corporation and Grandslam Enterprise Corp. are jointly and severally liable to pay complainant full total and permanent disability benefits in the amount of US$105,000.00 or its equivalent amount in Philippine currency at the time of payment.
>
> Respondents are further ordered to pay 10% attorney's fees based on

the total judgment award.

All monetary claims are hereby dismissed.

SO ORDERED.[9]

The LA reasoned out that respondent left the Philippines in good condition, thus, it could be logically inferred that he contracted the illness while on board the vessel. As respondent was not able to perform his job for more than 120 days since his repatriation, he became entitled to permanent disability benefits. Based on their CBA, respondent should be awarded US$105,000.00.[10]

Not in conformity with the ruling, the petitioners appealed to the NLRC which, in its October 17, 2007 Resolution, modified the L.A. Decision by reducing respondent's disability benefits from US$105,000.00 to US$20,900.00.[11] As modified, the decretal portion reads:

> WHEREFORE, the assailed Decision dated 21 May 2007 is hereby MODIFIED by ordering the respondents to pay jointly and severally complainant Hanziel O. Rosete a disability benefit of US$20,900, the amount equivalent to Grade 7 under POEA Standard Employment Contract.
>
> The payment of ten percent (10%) attorney's fees based on the judgment award is hereby AFFIRMED.
>
> SO ORDERED.[12]

The NLRC ruled that the grant of US$105,000.00 based on the provisions of the CBA had no legal basis because disability benefits under Article 28 thereon would refer only to permanent disability resulting from accident while in employment.[13] The NLRC held respondent was entitled to disability benefits but only up to Grade 7 as recommended by his own physician, Dr. George Pile.[14]

Both parties moved for reconsideration of said decision, but their respective motions were denied by the NLRC in its Resolution dated January 15, 2008.[15]

Respondent elevated the case to the CA via petition for certiorari under Rule 65 of the Rules of Court.[16] On March 23, 2010, the CA reversed the NLRC's decision. The *fallo* reads:

> WHEREFORE, the petition is GRANTED. The Resolutions dated October 17, 2007 and January 15, 2008 of the National Labor Relations Commission (NLRC), Quezon City, in NLRC-LAC (OFW-M) No. 07-000018-07(3) NLRC-OFW Case No. 06-08-02629-00 are ANNULLED and SET ASIDE. The Labor Arbiter's Decision dated May 21, 2007 is REINSTATED in full.

SO ORDERED.[17]

The CA held that there was no doubt that respondent was unable to work for more than one hundred twenty days (120) the requisite period for a grant of total disability benefits. Although the petitioners claimed that their CBA provision should be controlling, the CA clarified that "the relevant provisions of the POEA-SEC pertaining to permanent total disability remain essential parts of the parties' valid and binding contract."[18] The CA further stated that although respondent's Central Retinal Vein Occlusion was not listed as an occupational disease, he successfully established a causal connection from his work as a seaman to his illness. It stressed that compensability of a non-occupational disease, reasonable proof and not direct proof of a causal connection between the work and the ailment is required.[19]

Petitioners' Motion for Reconsideration[20] was likewise denied by the CA in its June 8, 2010 Resolution.

Hence, this petition.[21]

Petitioners submit the following issues for resolution:

I

WHETHER OR NOT THE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN RULING THAT PRIVATE RESPONDENT HANZIEL O. ROSETE IS ENTITLED TO TOTAL PERMANENT DISABILITY BENEFITS

II

WHETHER OR NOT THE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR RULING THAT PRIVATE RESPONDENT HANZIEL O. ROSETE IS ENTITLED TO DISABILITY BENEFITS UNDER THE COLLECTIVE BARGAINING AGREEMENT

III

WHETHER OR NOT THE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN RULING THAT PRIVATE RESPONDENT HANZIEL O. ROSETE IS ENTITLED TO ATTORNEY'S FEES.[22]

The petitioners contend that the CA erred in ruling that respondent was entitled to permanent and total disability benefits and for applying the provision of their CBA to award respondent US$105,000.00. They aver that Article 28 of their CBA only pertains to permanent disability suffered as a result of an accident.[23]

The petition is partly meritorious.

The first issue is whether respondent is entitled to claim disability benefits from the petitioners.

There is no quibble that respondent is entitled to disability benefits. The Standard Employment Contract (SEC) for seafarers was created by the Philippine Overseas Employment Administration (POEA) pursuant to its mandate under Executive Order (E.O.) No. 247[24] dated July 21, 1987 to "secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and to "promote and protect the well-being of Filipino workers overseas."[25]

In this case, respondent was diagnosed with Central Retinal Vein Occlusion of his left eye. Central retinal vein occlusion is medically defined as the blockage of the central retinal vein by a thrombus. It causes painless vision loss which is usually sudden, but it can also occur gradually over a period of days to weeks.[26] This condition, despite numerous medical procedures undertaken, eventually led to a total loss of sight of respondent's left eye. Loss of one bodily function falls within the definition of disability which is essentially "loss or impairment of a physical or mental function resulting from injury or sickness."[27]

Although Central Retinal Vein Occlusion is not listed as one of the occupational diseases under Section 32-A of the 2000 Amended Terms of POEA-SEC,[28] the resulting disability which is loss of sight of one eye, is specifically mentioned in Section 32 thereof (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted). More importantly, Section 20 (B), paragraph (4) states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related."[29]

The disputable presumption that a particular injury or illness that results in disability, or in some cases death, is work-related stands in the absence of contrary evidence. In the case at bench, the said presumption was not overturned by the petitioners. Although, the employer is not the insurer of the health of his employees, he takes them as he finds them and assumes the risk of liability.[30] Consequently, the Court concurs with the finding of the courts below that respondent's disability is compensable.

Now, the Court shall determine whether respondent is entitled to be awarded permanent total or permanent partial disability benefits.

It should be noted that the company-designated physician assessed the loss of respondent's left eye as a permanent partial disability while respondent's own physician indicated his disability as Grade 7.

The Court is more inclined to rule, however, that respondent is suffering from a permanent total disability as he was unable to return to his job that he was trained to do for more than one hundred twenty days already. The recent case of *Valenzona v. Fair Shipping Corporation, et al.*,[31] citing *Quitoriano v. Jebsens Maritime, Inc.*,[32] elucidated the concept of permanent total disability, in this wise: