

## THIRD DIVISION

[ G.R. No. 191491, December 14, 2011 ]

**JEBSENS MARITIME INC., REPRESENTED BY MS. ARLENE ASUNCION AND/OR ALLIANCE MARINE SERVICES, LTD., PETITIONERS, VS. ENRIQUE UNDAG, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This petition for review assails the September 16, 2009 Decision<sup>[1]</sup> and the March 3, 2010 Resolution<sup>[2]</sup> of the Court of Appeals (CA), which set aside the October 17, 2005 and January 24, 2006 Resolutions of the National Labor Relations Commission (NLRC), dismissing the complaint of respondent Enrique Undag (*respondent*) for disability benefits.

Records bear out that respondent was hired as Lead Operator on board the vessel FPSO Jamestown owned by Alliance Marine Services, Ltd. and managed by its local agent, Jebsens Maritime, Inc. (*petitioners*). Respondent's contract with petitioners was for a period of four (4) months with a basic salary of US\$806.00 a month. He was deployed on March 24, 2003 and eventually repatriated to the Philippines on July 18, 2003 after his contract with the petitioners had expired.

On September 24, 2003, about two months after repatriation, he went to see a physician, Dr. Efren Vicaldo (*Dr. Vicaldo*), for a physical check-up and was diagnosed to have "Hypertensive cardiovascular disease, Atrial Fibrillation, Diabetes Mellitus II, Impediment Grade X (20.15%)." According to Dr. Vicaldo, respondent had a history of hypertension and diabetes and was at risk of developing a stroke, coronary artery disease and congestive heart failure. He likewise stated that respondent's ailment was aggravated by his work as a seaman and that he was no longer fit for work. For said reason, respondent requested for financial assistance from petitioners but the latter denied his request.

Constrained, he filed a complaint for sickness benefits against petitioners before the NLRC, alleging that he had been suffering from chest pains and difficulty of breathing since July 2003 when he was on board petitioners' vessel. Despite knowing his bad physical condition upon repatriation, the petitioners did not give him any financial assistance. Thus, he prayed that petitioners be ordered to reimburse him for his medical expenses and pay him sickness allowance amounting to US\$3,224.00, including damages and attorney's fees.

Petitioners countered that respondent was not entitled to disability benefits because his repatriation was not due to medical reasons but due to the expiration of his employment contract. Petitioners basically argued that, under the POEA Standard Employment Contract (*POEA-SEC*), a seafarer was entitled to disability benefits only if he had suffered a work-related illness during the term of his contract.

On June 30, 2005, after due hearing, the Labor Arbiter (LA) rendered a decision ordering petitioners to pay, jointly and severally, respondent the Philippine peso equivalent of US\$60,000.00 representing total permanent disability compensation benefits for US\$3,224.00 sickness allowance, and 10% attorney's fees.

On appeal, however, the NLRC reversed the LA decision and denied respondent's claim for disability benefits. The NLRC reasoned out that respondent failed to present substantial evidence proving that he had suffered any illness while on board or after disembarking from petitioners' vessel. Respondent's motion for reconsideration was later denied.

Not satisfied with the NLRC decision, respondent appealed before the CA. On September 16, 2009, the CA rendered a decision *setting aside* the ruling of the NLRC. The appellate court stated that respondent was able to prove by substantial evidence that his work as a seafarer caused his hypertensive cardiovascular disease or, at least, was a relevant factor in contracting his illness. The CA explained that as Lead Operator, respondent performed multi-tasking functions which required excessive physical and mental effort. Moreover, he was also exposed to the perils of the sea and was made to endure unpredictable and extreme climate changes in the daily performance of his job. The CA also took judicial notice of the fact that overseas workers suffer a great degree of emotional strain while on duty on board vessels because of their being separated from their families for the duration of their contract. The CA was of the strong view that the inherent difficulties in respondent's job definitely caused his illness. The CA added that because of the nature of his work, the illness suffered by respondent contributed to the aggravation of his injury which was pre-existing at the time of his employment. Finally, the CA ruled that respondent is entitled to claim total and permanent disability benefits because of the undisputed doctor's findings that he "*is now unfit to resume work as a seaman in any capacity,*" which clearly constitutes a permanent and total disability as defined by law.

Not in conformity with the CA decision, petitioners filed this petition for review praying for its reversal raising this lone

### **ISSUE**

#### **WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING FULL DISABILITY BENEFITS TO THE PRIVATE RESPONDENT.**

In advocacy of their position, petitioners argue that the CA committed a reversible error in awarding respondent disability benefits on the principal ground that there are numerous substantial and competent evidence on record which clearly establish the fact that respondent was guilty of fraudulent misrepresentation, hence, forfeiting his right to any benefits under the POEA contract. For one, respondent intentionally lied when he declared that he was not suffering from a previous medical condition in his pre-employment medical examination (*PEME*). Specifically, he failed to disclose the fact that he was suffering from diabetes and heart problem, which is a clear case of concealment.

Secondly, respondent's illnesses were not acquired during the term of his contract

with petitioners. He had no evidence showing that he acquired the heart problem and hypertension while he was on board the vessel. The fact that respondent passed his PEME does not automatically mean that he suffered his illness on board the vessel or that the same was not pre-existing.

Third, the Labor Code provision on permanent disability is not applicable in a claim for disability benefits under the POEA contract.

### **Respondent's Position**

Respondent counters that petitioners never raised the issue of fraudulent misrepresentation before the labor tribunals despite being given the opportunity to do so. Hence, they are estopped from raising it for the first time on appeal. At any rate, he claims that he did not commit any fraud or misrepresentation because he underwent a stringent PEME, which included a blood and urine examination, conducted by the company-designated physician. His illness, therefore, was not pre-existing. In any case, the pre-existence of an illness is not a bar for the compensability of a seafarer's illness. His non-compliance with the mandatory 3-day reporting upon signoff is irrelevant because it only applies to a seafarer who has signed off from the vessel for medical reasons.

Moreover, respondent argues that a repatriation due to a finished contract does not preclude a seafarer from recovery of benefits, as the only requirement is that the disease must be a consequence or a result of the work performed. He has shown by substantial evidence that his cardiovascular disease was work-related. The strenuous work conditions that he experienced while on sea duty coupled with his usual encounter with the unfriendly forces of nature increased the risk of contracting his heart ailment.

Lastly, he asserts that his disability is permanent and total because he has been declared to be unfit for sea duty for which he is entitled to recover attorney's fees and litigation costs under Article 2208.

### **THE COURT'S RULING**

#### *No substantial evidence that illness was work-related*

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.<sup>[3]</sup>

Deemed incorporated in every Filipino seafarer's contract of employment, denominated as POEA-SEC or the Philippine Overseas Employment Administration-Standard Employment Contract, is a set of standard provisions established and implemented by the POEA, called the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels,

which contain the minimum requirements prescribed by the government for the employment of Filipino seafarers. Section 20(B), paragraph 6, of the 2000 Amended Standard Terms and Conditions provides:

## SECTION 20. COMPENSATION AND BENEFITS

x x x

### 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:

X x x

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 this 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.

Pursuant to the aforequoted provision, two elements must concur for an injury or illness to be compensable. First, that the injury or illness must be work-related; and second, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The 2000 POEA Amended Standard Terms and Conditions defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting in disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." These are:

### SECTION 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; and
- 4) There was no notorious negligence on the part of the seafarer.

Sec. 32-A(11) of the 2000 POEA Amended Standard Terms and Conditions explicitly