

SECOND DIVISION

[G.R. No. 184722, March 15, 2010]

ALEX C. COOTAUCO, PETITIONER, VS. MMS PHIL. MARITIME SERVICES, INC., MS. MARY C. MAQUILAN AND/OR MMS CO. LTD., RESPONDENTS.

D E C I S I O N

PEREZ, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure filed by petitioner Alex C. Cootauco (petitioner) assailing the: (1) Decision of the Court of Appeals dated 17 June 2008 in CA G.R. SP No. 101324,^[1] which affirmed the Resolutions dated 31 May 2007^[2] and 31 August 2007,^[3] issued by the National Labor Relations Commission (NLRC) in NLRC CA No. 050470-06 reversing the decision of the Labor Arbiter, granting the petitioner's claim for disability benefits. The NLRC, as a result, disallowed petitioner's claim for said benefits. Likewise assailed is the resolution of the Court of Appeals dated 25 September 2008,^[4] denying petitioner's Motion for Reconsideration.

The antecedent facts are:

On 9 September 2005, petitioner filed a Complaint before the Labor Arbiter docketed as NLRC NCR OFW Case No. 2005-09-02375-00, against herein respondents MMS Phil. Maritime Services, Inc. (MMS Phils.) and by Mary C. Maquilan (respondents), for medical reimbursement, permanent disability benefits, moral damages, compensatory damages, exemplary damages and attorney's fees.^[5]

In his Position Paper dated 26 January 2006 before the Labor Arbiter, petitioner alleged that on 14 March 2003, MMS Phils., for and in behalf of its principal, MMS Co. Ltd., hired him as Able Seaman for *M/V Pax Phoenix* after he passed the Pre-Employment Medical Examination (PEME) conducted by MMS Phils.'s designated physician and after obtaining the necessary Overseas Employment Certificate from the Philippine Overseas Employment Administration (POEA). Petitioner departed from the Philippines on 4 August 2003 on board the vessel *M/V Pax Phoenix* as an Able Seaman. He had various duties and responsibilities at sea, port, anchor and drills. According to petitioner, he did not only perform work that was assigned to him, but also other strenuous job assignments and other heavy workloads that exposed him to cold, heat and other elements of nature and perils of the sea. Resultantly, one day, he was surprised to see a speck of blood in his urine. He informed his 2nd Mate about the incident and was merely told to observe and report the same if it should be repeated. He disembarked on 19 May 2004, and on the following day, he had fever and experienced irregular urination. He consulted Dr. Benjamin C. Parco (Dr. Parco) at St. Tomas Clinic in Tondo, Manila, who advised him to take a rest and prescribed him with medicines for his flu and Urinary Track

Infection. The day following his consultation with Dr. Parco, on 21 May 2004,^[6] he reported at respondents' office for mandatory reportorial requirement and at the same time he informed respondents' company officer about his medical condition and asked for medical assistance which went unheeded. Despite the medication prescribed by Dr. Parco, there was no improvement in his condition, thus in September 2004, he went to the Seamen's Hospital for a thorough check-up. In his laboratory findings, it was shown that there were traces of blood with presence of stones in his urine. On 24 October 2004, he could no longer urinate, thus his wife brought him again to the Seaman's Hospital. The ultrasound and x-rays results showed that he had a 12mm stone in his urinary bladder and dark portion on his ureter, which must be immediately operated on.

Petitioner further alleged that on 11 November 2004, he was admitted at the Seamen's Hospital by Dr. Pahutan,^[7] his attending physician. He underwent a pre-operative cardiac and pulmonary evaluation, and the final diagnosis was "Urinary Bladder Stone." On 12 November 2004, he was operated on his left ureter by means of a urethrogram. On 1 December 2004, he again underwent surgery for the exploration of his left distal ureter. On 25 January 2005, he was given a medical certificate at the Seamen's Hospital with the diagnosis impression of Periureteritis (left) Distal Ureter and tuberculosis. Petitioner consulted an independent doctor in the person of Dr. Rodrigo F. Guanlao (Dr. Guanlao), an Internist-Cardiologist of the Philippine Heart Center. Dr. Guanlao diagnosed him as afflicted with the following: Hypertension stage 2, TB of the left Uretus (*sic*), Cystolithiasis, Carpal Tunnel Syndrome of both hands with impediment disability Grade 1, permanent unfit for sea duty.^[8]

Petitioner averred that he is entitled to medical reimbursement and sickness allowance as his sickness was incurred during the validity of his contract of employment and while performing his duty as Able Seaman of the vessel *M/V Pax Phoenix*; he is entitled to permanent Disability Benefits under his existing contract because his condition could have been brought about by the poor working conditions on board the vessel, and by exposure to different chemicals and other harmful substances in the vessel. He also claims that he is entitled to receive the total amount of US \$60,000.00 for permanent disability benefits.^[9]

Specifically, petitioner prayed that the respondents be ordered to reimburse his medical expenses and to pay him permanent disability benefits in the amount of US \$60,000.00; moral, compensatory and exemplary damages in the amount of P500,000.00 for each of the damages claimed, as well as attorney's fees equivalent to ten percent (10%) of the total monetary claims.^[10]

Expectedly, respondents negated petitioner's claim. They point out that sometime in early 2003, petitioner applied for a position in *M/V Pax Phoenix*. On 13 March 2003, petitioner formalized his employment with respondents by accomplishing the POEA Standard Employment Contract (POEA-SEC) which was to be effective upon petitioner's passing the requisite PEME. On 4 July 2003, petitioner underwent a PEME and he was required to disclose all existing or prior medical conditions. The disclosure requirement specifically focused on 29 medical conditions including stomach pain or ulcer, other abdominal trouble and high blood pressure, among others. Petitioner confirmed that he had never been afflicted with any illness, and the standard tests conducted on him yielded no significant findings, thus he had

been declared fit to work. He was assigned to serve on board the vessel *M/V Pax Phoenix* as able seaman for a period of nine (9) months. On 5 August 2003, petitioner joined the crew of *M/V Pax Phoenix* and his employment on board the vessel was without any incident. After the expiration of the term of petitioner's contract, he signed off from the vessel on 15 May 2004 and was repatriated on 19 May 2004. Upon his arrival in the Philippines, petitioner did not make any report of any ailment or injury allegedly suffered on board *M/V Pax Phoenix*. On 9 September 2005 or almost fifteen (15) months after petitioner's repatriation, he filed the Complaint before the Labor Arbiter.^[11]

Respondents argued that there is no basis for petitioner's claims under the POEA-SEC, as he did not suffer any work-related illness or injury during the term of his employment. His repatriation was due to the expiration of his contract and not due to any medical reasons and, at no time did he report any illness allegedly suffered during his employment on board *M/V Pax Phoenix* and even after repatriation. Section 20(B), paragraph 3 of the 2000 Amended Standard Terms and Conditions governing the employment of Filipino Seafarers provides that the seafarer must submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return, and failure to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the compensation and benefits for injury or illness. Petitioner is not entitled to his claim for damages and attorney's fees for the same is without basis. Finally, respondents prayed that the Complaint be dismissed for lack of merit.^[12]

The Labor Arbiter found ample justification to grant the claim for disability benefits of the petitioner and held:

The proximity from the time complainant was repatriated on May 19, 2004 and the illness/urinary bladder stone which started its symptoms on May 20, 2004 or one day after complainant's repatriation until all his illnesses were uncovered and he was declared unfit to work definitely shows that complainant incurred his illness while on board and during the effectivity of his contract as the urinary bladder stone could not develop overnight. This is bolstered by the fact that the complainant was employed by the respondent since 1994 to 2004 or for a period of ten years.

The *fallo* of the Decision^[13] dated 31 August 2006 rendered by the Labor Arbiter reads:

WHEREFORE, Respondents MMS Phil Maritime Services, Inc. and/or Mary C. Maquilan are hereby ordered jointly and severally to pay complainant Alex C. Cootauco disability compensation benefit Grade 1 equivalent to Sixty Thousand (US\$60,000) US Dollars pursuant to the POEA Standard Contract or its peso equivalent at the rate of exchange prevailing at the actual time of payment.

In addition, an attorney's fees equivalent to ten (10%) of the total award is hereby granted.

Respondents filed an Appeal with the NLRC which was docketed as NLRC CA No. 050470-06. The NLRC rendered a Resolution^[14] dated 31 May 2007, granting the appeal and reversing the decision of the Labor Arbiter.

The NLRC explained:

In his case, he never consulted the company-designated physician. Granting that the respondents-appellants refused to refer him to the company-designated physician, that did not prevent him from consulting him because it was the complainant-appellee who paid for all his medical expenses. Without the certification of the company-designated physician, We cannot consider the medical certification of Dr. Guanlao as independent as alleged by the complainant-appellee. Not only was it issued fifteen (15) months after repatriation, the certification was not accurate because the complainant-appellee never consulted Dr. Guanlao before August 18, 2005 but the doctor claimed that the complainant-appellee was `under his care, May 2004.'^[15]

Ultimately, the NLRC held:

WHEREFORE, considering the foregoing, the instant appeal is hereby GRANTED. The decision appealed from is REVERSED and SET ASIDE.

Accordingly, the complaint is DISMISSED for lack of merit.^[16]

Petitioner filed a motion for reconsideration with the NLRC which was denied in a resolution dated 31 August 2007.^[17]

He next sought recourse *via* a petition for review on *certiorari* under Rule 65^[18] with the Court of Appeals docketed as CA G.R. SP No. 101324.

In a Decision^[19] dated 17 June 2008, the Court of Appeals denied the petition and affirmed the Resolutions of the NLRC dated 31 May 2007 and 31 August 2007. In arriving at such disposition, the Court of Appeals ratiocinated:

Petitioner failed to undergo the required post-employment medical examination by a company-designated physician. Again, he allegedly consulted his own physician Dr. Guanlao, who issued a medical certificate on 18 August 2005, or after fifteen (15) months following petitioner's repatriation to the Philippines following the expiration of his employment contract, with the diagnosis "Hypertension, stage 2, TB of left uretus, Cystolithiasis, Carpel Tunnel Syndrom, both hand" and the remark "GRADE 1 disability Permanent unfit for sea duty."

As aforesaid, it is not disputed that petitioner failed to submit himself to a post-employment examination by a company-designated physician, the

adverse consequence of which is non-entitlement to the benefits. It bears stressing that it must be the company-designated physician who must declare that petitioner suffered a permanent disability, whether total or partial, due to injury or illness, during the term of the latter's employment. A resort to a "third doctor" could only be had if the physician appointed by the seafarer disagrees with the assessment of the company-designated physician, and when such third doctor has been agreed jointly between the employer and the seafarer. Therefore, it is of no moment that petitioner consulted Dr. Parco who prescribed medicines to him and thereafter he went to Dr. Pahutan of the Seamen's Hospital who issued a Medical Certification with the diagnosis impression of "Periureteritis (L) distal Ureter, 2 to tuberculosis" and relation to work "Oriented". Petitioner also sought the opinion of Dr. Guanlao, who issued a Certification on 18 August 2005, viz: "GRADE 1 disability permanent unfit for sea duty". The foregoing notwithstanding, petitioner utterly failed to undergo, within three working days from his return to the Philippines on 19 May 2004, any post-employment medical examination by a company-designated physician.

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Furthermore, it has been held that in connection with said Section 20-B of the POEA Standard Employment Contract, the employer could be held liable to the seafarer for disability benefits, if the latter could present proof that he acquired or contracted the injury or illness, which resulted to his disability, during the term of his contract. From these recent rulings, it could be gleaned that: Section 20-B of the POEA Standard Employment Contract refers not only to the seafarer's right to claim medical treatment and sickness allowance but also to his right to claim disability benefits; and the injury or illness, which resulted to disability, was acquired during the term of the employment contract. In the instant case, it has been established by substantial evidence that petitioner was signed off from the vessel on 15 May 2004 following the expiration of his employment contract and was repatriated to the Philippines on 19 May 2004; during his employment on board *M/V Pax Phoenix*, there was no incident; and upon his arrival in the Philippines, he made no report to private respondents of any ailment or injury allegedly suffered on board said vessel.

The dispositive portion of the assailed decision^[20] of the Court of Appeals reads:

WHEREFORE, premises considered, the Petition is DENIED for lack of merit. No costs.

The motion for reconsideration filed by petitioner was likewise denied by the Court of Appeals in a Resolution dated 25 September 2008.^[21] Hence, this petition is based on the following grounds:

I. THE HONORABLE COURT OF APPEALS SERIOUSLY ERREED IN DISMISSING THE PETITION ON THE GROUND THAT PETITIONER DID