

THIRD DIVISION

[G. R. No. 172800, October 17, 2008]

MARCIANO L. MASANGCAY, PETITIONER, VS. TRANS-GLOBAL MARITIME AGENCY, INC. AND VENTNOR NAVIGATION, INC., RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Assailed in this Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court is the *Decision*^[2] dated 10 February 2006 of the Court of Appeals in CA-G.R. SP No. 91393, entitled "Trans-Global Maritime Agency, Inc. and Ventnor Navigation, Inc. vs. National Labor Relations Commission and Marciano Masangcay," as well as the appellate court's *Resolution*^[3] dated 30 May 2006 in the same case.

In the questioned decision, the Court of Appeals granted the petition filed by respondents Trans-Global Maritime Agency, Inc. (Trans-Global) and Ventnor Navigation, Inc. (Ventnor); and issued the writ of *certiorari*, thereby, annulling and setting aside the *Resolution*^[4] dated 28 April 2005 and *Resolution*^[5] dated 30 June 2005 of the National Labor Relations Commission (NLRC), and ordering the latter to dismiss NLRC CA No. 041053-04 [NLRC-NCR OFW Case No. (M)03-10-2649-00] entitled "Marciano Masangcay vs. Trans-Global Maritime Agency, Inc., and/or Michael Estaniel and Ventnor Navigation, Inc."

The factual antecedents of the present petition are:

Ventnor is a foreign company based in Liberia and engaged in maritime commerce. It is represented in the Philippines by its manning agent, and co-respondent herein, Trans-Global, a corporation organized and existing under Philippine laws.

On 2 September 2002, petitioner Marciano Masangcay (Masangcay) was hired by Ventnor, through its manning agent, Trans-Global, as an oiler on M/T Eastern Jewel, an oil tanker. His employment was to run for a period of seven (7) months; and he was to receive, *inter alia*, a basic monthly salary of US\$445.00.^[6]

Twenty-one days later, or on 23 September 2002, while on board M/T Eastern Jewel, Masangcay noticed a "reddish discoloration of his urine upon micturation (urination). This happened several times and later became associated with bouts of left lower abdominal pain radiating to the loin area."^[7]

Docking at the nearest port, on 4 October 2002, Masangcay was brought to the Fujairah Hospital, Fujairah, United Arab Emirates, because of lower abdominal pain and left loin pain of ten (10) days duration with difficulty in urinating.^[8] The attending physician at said hospital diagnosed him to be suffering from *renal failure*

due to multiple renal stones on the left kidney with bilateral hydronephrosis with dilation of ureters and pelvicalyceal system. "[L]eft nephrostomy or better removal of the right pelvi-ureteric calculus"^[9] was the recommended treatment but Masangcay refused surgical intervention and insisted on being repatriated back to the Philippines instead.

Upon his arrival in Manila on 7 October 2002, Masangcay was immediately referred to Trans-Global's designated physician, Dr. Mary Ann D. Barrientos (Dr. Barrientos) of the Associated Medical and Clinical Services, Inc. for evaluation. In turn, she referred him to one of the urologists at the Makati Medical Center (MMC) for a consult and eventual management because his blood test results showed elevated BUN^[10] and Creatinine levels and his urinalysis revealed an active infection.

From the 21st until the 26th of October 2002, Masangcay was hospitalized at the MMC for the treatment of his "Non-Functional Right Kidney and Left Pelvolithiasis"^[11]; which included the following medical procedures:

Cystoscopy^[12] Bilateral RGP
Left Double J Stenting
Left ESWL^[13]

During one of Masangcay's subsequent follow-ups, Dr. Francisco Agustin, Jr., his attending physician, requested a CT scan of his upper abdomen to assess the status of his (Masangcay) right kidney, even though the urinalysis showed no more trace of blood. The result of the scan revealed an "obstructing urethrolithiasis on the right kidney with secondary hydronephrosis," *i.e.*, a poorly functioning right kidney where the flow of urine is obstructed by the presence of kidney stones. Due to the aforementioned result, the removal of the non-functioning right kidney was advised but Masangcay refused.

Masangcay was then referred to Dr. Reynaldo C. de la Cruz of the National Kidney and Transplant Institute (NKTi) for a second opinion. Thereat, due to "right ureterolithiasis,"^[14] said physician confirmed the need for another operation; thus, on the 17th until the 23rd of December 2002, Masangcay was admitted and confined at the NKTi for the following medical procedures, *viz*:

CYSTOSCOPIC REMOVAL OF DOUBLE-J STENT, LEFT
BILATERAL RETROGRADE PYELOGRAM
URETEROLITHOTOMY,^[15] RIGHT

The foregoing medical procedures proved successful as evidenced by a repeat examination of Masangcay's urine, done on 8 January 2003, which yielded a negative result for the presence of blood.

On 29 January 2003, upon follow-up, Dr. dela Cruz pronounced^[16] Masangcay fit to resume work^[17] as all his laboratory examinations showed normal results. Accordingly, on 30 January 2003, Trans-Global's designated physician, Dr. Barrientos of the Associated Medical & Clinical Services, Inc., declared Masangcay fit to go back to work after a regular medical examination and pegged the disability period of the latter to be from 3 October 2002 until 3 February 2003.^[18]

On 21 February 2003, Trans-Global, in behalf of Ventnor, paid Masangcay his full 120 days Sick Leave pay of Ninety Five Thousand Five Hundred Sixty Four and 52/100 (P95,564.52) Pesos^[19] representing One Thousand Seven Hundred Seventy Nine Dollars and 60/100 (US\$1,779.60) U.S. Dollars, as well as all his medical and hospital expenses, professional fees of his attending physicians, the total amount of which reached One Hundred Seventy Four Thousand Seventy Five and 10/100 (P174,075.10) Pesos.^[20]

Sometime in the first week of March 2003,^[21] Masangcay was asked to report back to the office of Trans-Global for deployment line-up. He was also asked to undergo medical examination in view of his impending deployment. When Masangcay reported to the premises of Trans-Global, however, he was informed by the Port Captain that he (Masangcay) can no longer be deployed due to negative reports about him coming from its principal, Ventnor.

More than six months later, or on 16 October 2003, however, armed with a Medical Certificate issued by one Dr. Efren R. Vicaldo (Dr. Vicaldo), a cardiologist, Masangcay instituted a complaint^[22] against Trans-Global and Ventnor, including Trans-Global's President, Michael Estaniel, before the National Labor Relations Commission (NLRC) for the payment of disability benefit, damages and attorney's fees.

The abovementioned Dr. Vicaldo's Medical Certificate^[23] dated 31 July 2003 contained the following findings:

Ureterolithiasis,^[24] right
Pelvolithiasis, left
S/P Ureterolithotomy, right
S/P ESWL, left
Renal insufficiency
Impediment grade III (78.36%)

Dr. Vicaldo justified the finding of Impediment Grade III (78.36%) in this wise:

- This patient/seaman presented with a history of abdominal pain, painful and bloody urination on September 2002.
- He was confined in Dubai UAE on October 3-6, 2002 where work up showed elevated creatinine, right ureteral stone and left renal pelvic stone. He was advised surgery but opted to be repatriated back to the Philippines.
- On repatriation, he was confined at Makati Medical Center on October 8, 2002 where he underwent ESWL, left.
- On December 17-23, 2003, he was confined at National Kidney Institute and he underwent right ureterolithotomy.
- He is now unfit to resume work as seaman in any capacity.

- His illness is considered work aggravated.
- He needs regular monitoring of his renal function for deterioration and possible recurrence of kidney stones.
- His right kidney is non-functioning and his left kidney has impaired function. There's a likelihood that he would need dialysis in the future.
- He cannot land a gainful employment given his medical

background.

- His renal insufficiency can cause secondary hypertension with associated target organ involvement.

Masangcay is claiming disability benefit under Section 20(b), paragraph 5 of the Philippine Overseas Employment Administration (POEA) Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, as amended by Memorandum Circular No. 55, Series of 1996, which is deemed integrated in every contract of employment of Filipino seafarers on ocean-going vessels, and which provides:

SECTION 20. COMPENSATION AND BENEFITS

x 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 x

5. In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 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.

In view of the above-quoted provision, Masangcay alleged that his illness was contracted during the term of his Contract of Employment. He likewise prayed for moral and exemplary damages in view of the respondents' supposed deliberate and wanton refusal to pay his claims.

Rebutting Masangcay's complaint, Trans-Global, Ventnor, and Estaniel, the respondents therein, countered that "[s]ince complainant had fully recovered and was pronounced fit for employment, his claim for disability benefits has no basis" [25]; that "[t]he right to compensation for disability arises only when it is shown that the seafarer is disabled on account of an illness or injury suffered while in the employ of his employer" [26]; that, in this case, "the company-designated physician had certified that complainant is fit for employment" [27]; that "assuming arguendo but without admitting that their assessments and findings, including Dr. Barrientos', are disputed, however, under Sec. 20B, there must be a third doctor chosen by both parties who should resolved the issue and make a decision thereon" [28]; and that "[a]bsent such determination, the complaint is premature and without basis since it is that third doctor's decision which will be considered as final."

In a Decision [29] dated 15 April 2004, Labor Arbiter Daisy G. Cauton-Barcelona found Masangcay's complaint meritorious and ordered Trans-Global, Ventnor, and Estaniel to pay Masangcay the amount of Thirty Nine Thousand One Hundred Eighty

U.S. Dollars (US\$39,180.00) representing the latter's disability benefit at Impediment Grade III (78.36%). The decretal part of said decision reads:

WHEREFORE, as above-discussed, the respondents are hereby ordered, jointly and severally, to pay the complainant his disability benefit at Impediment Grade III (78.36%) in the amount of US\$39,180.00 or its Philippine Peso equivalent at the time of payment plus ten (10%) percent of the total monetary award as and for attorney's fees.

The labor arbiter opined that the compensability of an ailment does not depend on whether or not the injury or disease was pre-existing at the time of employment, but rather, if the injury or disease was related to or was aggravated by Masangcay's work. The labor arbiter gave great weight to the medical opinion of Dr. Vicaldo rather than that of Trans-Global's designated physicians considering that "respondents' accredited doctors' opinion has (*sic*) more than meets the eye and should not be taken at face value. For most often than not, they are palpably self-serving and bias (*sic*) in favor of the employer and certainly cannot be considered independent."

On appeal to the NLRC, the Commission affirmed the decision of the labor arbiter albeit with modification. The dispositive portion of the Commission's Resolution dated 28 April 2005 states that:

WHEREFORE, the appealed decision is AFFIRMED but with MODIFICATION in that the individual respondent-appellant [Estaniel] is absolved from any or all liabilities arising from the controversy.^[30]

The NLRC dismissed the claim against Estaniel for the reason that Masangcay failed to adduce evidence that the President of Trans-Global acted with malice and bad faith in denying his (Masangcay) disability benefit claim. The subsequent joint motion for reconsideration of Trans-Global and Ventnor was denied by the Commission for lack of merit in an *Resolution* dated 30 June 2005.

Undaunted, Trans-Global and Ventnor filed an original action for *certiorari* before the Court of Appeals imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the NLRC for affirming the decision of the labor arbiter.

In a Decision promulgated on 10 February 2006, the appellate court granted the petition for *certiorari* of Trans-Global and Ventnor. It nullified and set aside the challenged *Resolutions* of the NLRC for having been issued in grave abuse of discretion amounting to lack or excess of jurisdiction. The *fallo* of the said judgment reads:

WHEREFORE, the PETITION FOR CERTIORARI is GIVEN DUE COURSE.

The RESOLUTION of the National Labor Relations Commission promulgated on April 28, 2005 in NLRC CA No. 041053-04 [NLRC-NCR OFW Case No. (M)03-10-2649-00], entitled Marciano Masangcay v. Trans-Global Maritime Agency, Inc. and/or Michael Estaniel and Ventnor Navigation, Inc.; and the ORDER of June 30, 2005 are NULLIFIED AND SET ASIDE.

The National Labor Relations Commission is ORDERED to dismiss NLRC