588 Phil. 895

SECOND DIVISION

[G.R. No. 172933, October 06, 2008]

JESUS E. VERGARA, PETITIONER, VS. HAMMONIA MARITIME SERVICES, INC. AND ATLANTIC MARINE LTD., RESPONDENTS.

D E C I S I O N

BRION, J.:

Seaman Jesus E. Vergara (*petitioner*) comes to us through this Petition for Review on *Certiorari*[1] with the plea that we set aside - for being contrary to law and jurisprudence - the Decision[2] promulgated on March 14, 2005 and the Resolution[3] promulgated on June 7, 2005 by the Court of Appeals (*CA*), both issued in C.A.-G.R. SP No. 85347 entitled *Jesus E. Vergara v. National Labor Relations Commission, et al.*

THE FACTUAL BACKGROUND

On April 4, 2000, petitioner was hired by respondent Hammonia Maritime Services, Inc. (*Hammonia*) for its foreign principal, respondent Atlantic Marine Ltd., (*Atlantic Marine*). He was assigned to work on board the vessel *British Valour* under contract for nine months, with a basic monthly salary of US$ 642.00.

The petitioner was a member of the Associated Marine Officers' and Seaman's Union of the Philippines (*AMOSUP*). AMOSUP had a collective bargaining agreement (*CBA*) with Atlantic Marine, represented in this case by Hammonia.

The petitioner left the Philippines on April 15, 2000 to rendezvous with his ship and to carry out therein his work as a pumpman. In August 2000, while attending to a defective hydraulic valve, he felt he was losing his vision. He complained to the Ship Captain that he was seeing black dots and hairy figures floating in front of his right eye. His condition developed into a gradual visual loss. The ship's medical log entered his condition as "internal bleeding in the eye" or "glaucoma."[4] He was given eye drops to treat his condition.

The petitioner went on furlough in Port Galveston, Texas and consulted a physician who diagnosed him to be suffering from "vitreal hemorrhage with small defined area of retinal traction. Differential diagnosis includes incomplete vitreal detachment ruptured macro aneurism and valsulva retinopathy."[5] He was advised to see an ophthalmologist when he returned home to the Philippines.

He was sent home on September 5, 2000 for medical treatment. The company-designated physician, Dr. Robert D. Lim of the Marine Medical Services of the Metropolitan Hospital, confirmed the correctness of the diagnosis at Port Galveston, Texas. Dr. Lim then referred the petitioner to an ophthalmologist at the Chinese

General Hospital who subjected the petitioner's eye to focal laser treatment on November 13, 2000; vitrectomy with fluid gas exchange on December 7, 2000; and a second session of focal laser treatment on January 13, 2001.

On January 31, 2001, the ophthalmologist pronounced the petitioner fit to resume his seafaring duties per the report of Dr. Robert D. Lim, Medical Coordinator.[6] The petitioner then executed a "certificate of fitness for work" in the presence of Dr. Lim. [7] Claiming that he continued to experience gradual visual loss despite the treatment, he sought a second opinion from another ophthalmologist, Dr. Patrick Rey R. Echiverri, who was not a company-designated physician. Dr. Echiverri gave the opinion that the petitioner was not fit to work as a pumpman because the job could precipitate the resurgence of his former condition.

On March 20, 2001, the petitioner submitted himself to another examination, this time by Dr. Efren R. Vicaldo, a physician who was not also designated by the company. Dr. Vicaldo opined that although the petitioner was fit to work, he had a Grade X (20.15%) disability which he considered as permanent partial disability.

Armed with these two separate diagnoses, the petitioner demanded from his employer payment of disability and sickness benefits, pursuant to the Philippine Overseas Employment Administration Standard Employment Contract Governing the Employment of all Filipino Seamen on Board Ocean-going Vessels (*POEA Standard Employment Contract*), and the existing CBA in the company. The company did not heed his demand, prompting the petitioner to file a complaint for disability benefits, sickness allowance, damages and attorney's fees, docketed as NLRC NCR OFW Case No. (M) 01-050809-00.

On January 14, 2003, Labor Arbiter Madjayran H. Ajan rendered a decision in the petitioner's favor.[8] The Arbiter ordered Hammonia and Atlantic Marine to pay the petitioner, jointly and severally, sickness allowance of US$ 2,568.00 and disability benefits of US$ 60,000.00 under the CBA, and 10% of the monetary award in attorney's fees.

The respondents appealed to the National Labor Relations Commission (*NLRC*) which rendered a decision on March 19, 2004 reversing the Labor Arbiter's ruling.[9] It dismissed the complaint on the ground that the petitioner had been declared fit to resume sea duty and was not entitled to any disability benefit. By resolution, the NLRC denied the petitioner's motion for reconsideration.[10]

The petitioner thereafter sought relief from the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. The CA dismissed the petition in a Decision promulgated on March 14, 2005,[11] and likewise denied the petitioner's motion for reconsideration.[12] Hence, the present petition.

THE PETITION

The petitioner contends that the CA erred in denying him disability benefits contrary to existing jurisprudence, particularly the ruling of this Court in *Crystal Shipping Inc., A/S Stein Line Bergen v. Deo P. Natividad,*[13] and, in strictly interpreting the POEA Standard Employment Contract and the CBA between the parties on the

matter of who determines a seafarer's disability.

The petitioner particularly questions the CA decision for giving credit to the certification by the company-designated physician, Dr. Robert Lim, that declared him fit to work.[14] On the assumption that he was indeed fit to work, he submits that he should have been declared to be under permanent total disability because the fit-to-work declaration was made more than 120 days after he suffered his disability.

The petitioner laments that the CA accorded much weight to the company-designated physician's declaration that he was fit to work.[15] He considers this a strict and parochial interpretation of the POEA Standard Employment Contract and the CBA. While these documents provide that it is the company doctor who must certify a seafarer as permanently unfit for further sea service, this literal interpretation, to the petitioner, is absurd and contrary to public policy; its effect is to deny and deprive the ailing seaman of his basic right to seek immediate attention from any competent physician. He invokes in this regard our ruling in *German Marine Agencies, Inc. et al., v. National Labor Relations Commission.*[16]

In a different vein, the petitioner impugns the pronouncement of Dr. Robert Lim, the company-designated physician, that he was fit to resume sea duties as of January 31, 2001 since Dr. Lim did not personally operate on and attend to him when he was treated; he had been under the care of an ophthalmologist since September 6, 2000. The petitioner points out that there is nothing in the record to substantiate the correctness of Dr. Lim's certification; neither did the attending eye specialist issue any medical certification, progress report, diagnosis or prognosis on his eye condition that could be the basis of Dr. Lim's certification. The petitioner stresses that Dr. Lim's certification was not based on his first hand findings as it was issued in his capacity as the "Medical Coordinator" of the Metropolitan Hospital.[17] He also points out that Dr. Lim is not an eye specialist.

To the petitioner, it is the competence of the attending physician and not the circumstance of his being company-designated that should be the key consideration in determining the true status of the health of the patient/seaman. He seeks to rebut Dr. Lim's certification through the opinion of his private ophthalmologist, Dr. Patrick Rey R. Echiverri that "he would not advise him to do heavy work; he would not also be able to perform tasks that require very detailed binocular vision as the right eye's visual acuity could only be corrected to 20/30 and near vision to J3 at best."[18] The petitioner likewise relies on the assessment and evaluation of Dr. Efren R. Vicaldo that he suffers from partial permanent disability with a Grade X (20.15%) impediment and is now "unfit to work as a seaman."[19]

The petitioner disputes the respondent companies' claim that he is no longer disabled after his visual acuity had been restored to 20/20; it is fallacious because it views disability more in its medical sense rather than on its effect on the earning capacity of the seaman. Citing supporting jurisprudence, the petitioner posits that in disability compensation, it is the inability to work resulting in the impairment of one's earning capacity that is compensated, not the injury itself. He maintains that even if his visual acuity is now 20/20 as alleged by the company-designated physician, he can nevertheless no longer perform his customary work as pumpman on board an ocean-going vessel since the job involves a lot of strain that could again cause his vitreous hemorrhage. This limitation impairs his earning capacity so that

he should be legally deemed to have suffered permanent total disability from a work-related injury. In this regard, the petitioner cites as
well his union's CBA[20] whose paragraph 20.1.5 provides that:

> 20.1.5 Permanent Medical Unfitness - A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph is regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e., US$ 80,000 for officers and US$ 60,000 for ratings. Furthermore, any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea services in any capacity by the company doctor, shall also be entitled to 100% compensation.

Finally, the petitioner contends that because there is doubt as to the accuracy of the medical opinion of the company-designated physician, the doubt should be resolved in his favor, citing *Sy v. Court of Appeals,*[21] as well as Article 4 of the Labor Code.[22]

THE CASE FOR RESPONDENTS

In a memorandum[23] filed on December 20, 2007, respondents Hammonia and Atlantic Marine entreat this Court to dismiss the petition under the following arguments:

1. The provisions of the POEA Standard Employment Contract and the CBA between the parties clearly provide that the assessment of the company-designated physician should be accorded respect.

2. There are no legal or factual bases for the petitioner's claim of total and permanent disability benefits as he was declared "fit to work."

3. The petitioner's reliance on the *Crystal Shipping v. Natividad*[24]case is misplaced.

4. The petitioner is not entitled to attorney's fees.

The respondents anchor their case on their compliance with the law and the existing CBA as applied to the petitioner's circumstances.

They point out that upon the petitioner's repatriation, he was immediately referred to an ophthalmologist who scheduled him for observation and regular monitoring preparatory to possible vitrectomy. He was prescribed medication in the meantime.

On November 13, 2000, the petitioner underwent laser treatment of the right eye, which he tolerated well. His vitrectomy, scheduled on November 22, 2000, was deferred because he was noted to have accentuated bronchovascular marking on his chest x-ray, and mild chronic obstructive pulmonary disease as revealed by his pulmonary function test. He was given medication for his condition and was advised to stop smoking.

The petitioner was cleared for surgery on November 29, 2000. He underwent vitrectomy with fluid gas exchange and focal laser treatment of his affected eye on

December 7, 2000. He tolerated the procedure well. His condition stabilized and he was discharged for management as an outpatient on December 9, 2000.

On December 13, 2000, the petitioner's vision was 20/40 (r) and 20/20 (l) with correction and slight congestion observed in his right eye. His vision improved to 20/25 (r) and 20/20 (l) by December 20, 2000 although a substantial lesion was observed and contained by laser markings. This remained constant and by January 11, 2001, no sign of vitreous hemorrhage was noted on fundoscopy.

On January 13, 2001, petitioner underwent his second session of laser treatment and he again tolerated the procedure well. By January 31, 2001, his visual acuity was improved to 20/20 for both eyes, with correction. He was prescribed eyeglasses and was found fit to resume his sea duties. The petitioner executed a certificate of fitness for work under oath, witnessed by Dr. Robert Lim, the company-designated physician who had declared the petitioner fit to work based on the opinion of the handling eye specialist.[25]

The respondents anchor their objection to the grant of disability benefits on Dr. Lim's certification. They dispute the petitioner's contention that the medical certifications and assessments by the petitioner's private physicians - Dr. Echiverri and Dr. Vicaldo - should prevail.

The respondents object particularly to the petitioner's claim that Dr. Lim's assessment is not authoritative because "Dr. Lim does not appear to be an eye specialist."[26] They point out that the issue of Dr. Lim's qualifications and competence was never raised at any level of the arbitration proceedings, and, therefore, should not be entertained at this stage of review. They submit that if the petitioner truly believed that the company-designated physician was incompetent, he should have raised the matter at the earliest possible opportunity, or at the time he accepted Dr. Lim's assessment. On the contrary, they point out that the petitioner concurred with the assessment of the company-designated physician by executing a certificate of fitness to work.[27]

The respondents likewise question the petitioner's reliance on Art. 20.1.5 of the CBA for his claim that he is entitled to 100% disability compensation since his doctors, Echiverri and Vicaldo, declared him unfit to work as a seaman although his disability was determined to be only at Grade X (20.15%), a partial permanent disability. They contend that the petitioner's position is contrary to what the cited provision provides as the CBA[28] specifically requires a "company doctor" to certify a seafarer as permanently unfit for service in any capacity.

The respondents bewail the petitioner's attempt to have this Court find him permanently disabled because he "was under the medication and care of the company-designated physician for over four (4) months or more than 120 days." They cite Section 20 B of petitioner's POEA Standard Employment Contract whose relevant portion states: [29]

> 3. Upon sign-off from 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 his permanent disability has been assessed by the company-designated physician, but in no case shall this