552 Phil. 130

[G.R. NO. 156573, June 19, 2007]

MICRONESIA RESOURCES, DYNACOM SHIELD SHIPPING LTD. AND SINGA SHIP MANAGEMENT, A. S., PETITIONERS, VS. FABIOLO CANTOMAYOR, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the September 13, 2002 Decision[1] and December 5, 2002 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 70388[3] which reversed and set aside the November 29, 2001 Decision[4] and January 31, 2002 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC NCR CA 027007-01 [OFW (M) 99-10-1799-00].

The antecedent facts are as summarized by the CA, *viz.:*

> On or about September 29, 1998, petitioner Fabiolo Cantomayor* entered into a contract of overseas employment with respondent Dynacom Shield Shipping Ltd. and Singa Ship Management A.S. represented by respondent Micronesia Resources** to work on board the vessel M/T "CLOUD" under the following terms and conditions approved by the Philippine Overseas Employment Administration (POEA):
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> |---|---|
> | Duration of Contract: | 9 mos. plus/minus 1 mo. |
> | Position: | Third Officer |
> | Basic Mo. Salary: | US $824.00/mo. |
> | Hours of work: | 191 hrs./mo. (as per CBA '98) |
> | Overtime: | US $ 512.00/mo. |
> | Vacation Leave with Pay: | US $ 8 days/mo. |
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> Sometime in October 1998, petitioner joined the vessel M/T "CLOUD". Two (2) months thereafter, petitioner started to feel weak and encountered difficulty in breathing. Petitioner ignored his condition and continued with his employment. However, on or about February 17, 1999, petitioner, while working, suddenly felt dizzy and eventually collapsed. He regained consciousness not long after but since then he always felt weak and was constrained to work lightly.
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> When the vessel reached Italy, petitioner was brought to a hospital and was diagnosed to have coronary artery disease and was advised to undergo by-pass surgery. In view thereof, petitioner was repatriated to the Philippines and immediately sought treatment at the Medical Center of Manila, attended by a company-designated physician who noted that

> three (3) of his artery vessels were blocked, thereby confirming the diagnosis made by the doctors in Italy and echoing the same recommendation for immediate by-pass surgery. Thus, on or about June 30, 1999, petitioner underwent coronary artery by-pass at the Philippine Heart Center.
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> Considering his medical condition, petitioner was not able to return to his previous employment as a Third Officer. Consequently, he requested respondents to grant him permanent and total disability compensation as well as the reimbursement of his medical expenses in accordance with the terms and conditions of the Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarer on Board Ocean-going Vessels (otherwise known as the POEA Standard Employment Contract) and the JSU-AMOSUP CBA, of which he was allegedly covered.[6]

Micronesia, et al. denied the claim of Cantomayor but shouldered the expenses of his ongoing medical treatment. They also offered to pay him compensation for his Grade 7 permanent and ***partial*** disability based on the following recommendation of a company physician:

> There is no specific item in the POEA Schedule of Disability Grading regarding his illness. The nearest item is under "Abdomen" #4, instead of intra-abdominal organ involvement, the involved organ is the heart. Mr. Cantomayor suffered a disability grading of Grade 7 – moderate residuals of disorder of inthrathoracic organ (heart).[7]

Cantomayor pressed for payment of permanent and ***total*** disability compensation amounting to US $80,000.00 and filed a complaint with the National Labor Relations Commission (NLRC) Arbitration Board. Labor Arbiter (LA) Romeo Go rendered a Decision on October 16, 2000, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered dismissing the complaint for lack of merit. However, respondents are ordered to pay complainant the amount of US$20,900 pertaining to grade 7 disability benefits.[8]

Micronesia, et al. did not appeal from the foregoing award. It was only Cantomayor who filed an appeal with the NLRC, insisting that he be compensated for the permanent and total disability he suffered.

The NLRC dismissed his Appeal in its November 29, 2001 Decision. His Motion for Reconsideration was also denied in NLRC Resolution dated January 31, 2002.

Cantomayor filed a Petition for *Certiorari* which the CA granted in the September 13, 2002 Decision assailed herein, thus:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE, and the writ prayed for, accordingly GRANTED. The assailed Decision dated November 29, 2001 and Resolution dated January 31, 2002 of the National Labor Relations Commission (NLRC) in NLRC NCR CA 027007-01 [OFW (M) 99-10-1799-00] are hereby REVERSED and SET ASIDE and a new one entered declaring petitioner to be suffering from a permanent and total disability justifying the grant in

his favor of full benefits in accordance with law. In addition, attorney's fees equivalent to ten percent (10%) of the total monetary award herein is likewise granted to petitioner.

No pronouncement as to costs.

SO ORDERED.[9]

Micronesia, et al. filed a Motion for Reconsideration but to no avail.

Hence, the present Petition with the following issues:

First, the Petition for Certiorari filed by private respondent is way out of time and should no longer have been acted upon, and because of this, the Decision of the NLRC below became final and executory and may no longer be disturbed;

Second, the finding of the Court of Appeals that private respondent suffers total and permanent disability is baseless;

Third, the private respondent is entitled to no more than what the NLRC awarded him below, because: the mere fact that private respondent can no longer work as a seaman is not in itself sufficient justification to award him total disability compensation; b) entitlement to disability compensation under the Standard Terms of the POEA Contract is schedular in nature, and does not support the total disability compensation award granted to the private respondent; and c) private respondent is entitled only to the disability compensation justified by his condition, which is as assessed by the company's designated physicians. [10]

In their Memorandum, petitioners Micronesia, et al. insist that respondent Cantomayor is not entitled to any compensation because his illness is not compensable and, even if it were, the same was a pre-existing condition which he concealed from his employers. They also argue that, if Cantomayor is held entitled to compensation, then his award should be that corresponding to a Grade 7 disability for this was the assessment given by their company physician.

The petition lacks merit.

The procedural issue raised by Micronesia, et al. deserves short shrift. It is axiomatic that the CA has discretion to grant a motion for extension provided that it be interposed within the original filing period.[11] Cantomayor had until April 9, 2002 (April 8, 2002 being a holiday) to file a petition for *certiorari* but on said date he filed a Motion for Extension[12] of thirty (30) days or until May 9, 2002 to file his petition. He actually filed said petition on April 30, 2002. The timeliness of said petition was never questioned by Micronesia, et al. before the CA, not even in their Motion for Reconsideration from the September 13, 2002 CA Decision. The petition was therefore properly given due course by the CA.

Going now into the substantive matter raised by Micronesia, et al., we note that the

LA denied the claim of Cantomayor for permanent and total disability compensation based on the finding that his ailment was a pre-existing condition. The LA explained:

> It is undisputed that complainant was repatriated to the Philippines due to coronary disease he suffered while employed as a seafarer abroad. Back home, he was confirmed to be suffering from coronary artery disease [in] 3 vessels and needed a bypass surgery. In fact, the findings of the hospital in Italy show that complainant suffered occlusions in three vessels, one ranging from 70% to 100%, the second 100%, and the third 80%, all of which indicate that two of the said vessels were almost completely blocked while the third has been reduced to 20% capacity. This [sic] findings prove that complainant's ailment was already in an advanced stage affirming the fact that the illness was not an overnight occurrence but already a pre-existing condition.[13]

The NLRC found no taint of grave abuse of discretion in the foregoing decision of the LA.

The CA overturned the NLRC and LA and held that the coronary artery disease which afflicted Cantomayor during his employment with Micronesia, et al. caused him to suffer a permanent and total disability with a Grade 7 impediment rate, for which he is entitled to full compensation. The reasons cited by the CA in reversing the NLRC and LA are summarized as follows:

First, Cantomayor's ailment is compensable under Section 32-A of the POEA Standard Employment Contract.[14]

Second, respondent's ailment was not pre-existing as shown by the result of his Pre-employment Medical Examination (PEME) where physicians designated by petitioners declared him fit to work. The finding that respondent's ailment was already in an advanced stage when it was discovered does not preclude the possibility that it developed during his employment with petitioners.[15]

Finally, respondent's disability is permanent and total because the severity of his ailment rendered him incapable of performing the work of a seafarer.[16]

The reasoning of the CA is well-founded, although we note that it was mistaken when it cited Section 32-A of the POEA Standard Employment Contract.

In Paragraph 2 of their September 29, 1998 Contract of Employment,[17] the parties incorporated the provisions of the 1996 POEA Standard Employment Contract (1996 POEA-SEC),[18] such as Section 20-B (5) which reads:

> Section 20 Compensation and Benefits
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> x x x x
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> B. Compensation and Benefits for Injury or Illness
>
> > The liabilities of the employer ***when the seafarer suffers 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 his employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his 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.

We have interpreted the foregoing provision to be a sufficient legal basis for a grant of disability benefits to a seafarer who suffers any injury or illness during the term of his contract. In the recent case of *Remigio v. National Labor Relations Commission,*[19] we held:

> "Disability" is generally defined as "loss or impairment of a physical or mental function resulting from injury or sickness." Clearly, "disability" is not synonymous with "sickness" or "illness," the former being a potential effect of the latter. The schedule in Sec. 30 of the POEA SEC is a Schedule of Disability or Impediment for Injuries Suffered and Diseases or Illness Contracted. It is not a list of compensable sicknesses. Unlike the 2000 POEA SEC, nowhere in the 1996 POEA SEC is there a list of "Occupational Diseases."
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> ***The unqualified phrase "during the term" in Section 20(B) of the 1996 POEA SEC covers all injury or illness occurring in the lifetime of the contract.*** The injury or illness need not be shown to be work-related. In Sealanes Marine Services, Inc. v. NLRC, we categorically held:
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> > The argument of petitioners that since cancer of the pancreas is not an occupational disease it was incumbent upon Capt. Arante to prove that his working conditions increased the risk of contracting the same, is not meritorious. It must be noted that his claims arose from the stipulations of the standard format contract entered into between him and SEACORP which, per Circular No. 2, Series of 198420[30] of respondent POEA was required to be adopted and used by all parties to the employment of any Filipino seamen (sic) on board any ocean-going vessel. His claims are not rooted from the provisions of the New Labor Code as amended. Significantly, under the contract, compensability of the death or illness of seam[e]n need not be dependent upon whether it is work connected or not. Therefore, proof that the working conditions increased the risk of contracting a disease or illness, is not required to entitle a seaman who dies during the term thereof by reason of such disease or illness, of the benefits stipulated thereunder which are, under Section C(2) of the same Circular No. 2, separate and distinct from, and in addition to whatever benefits which the seaman is entitled to under Philippine laws.