

EIGHTH DIVISION

[CA-G.R. SP No. 134617, March 06, 2015]

YIALOS MANNING SERVICES, INC., AND/OR OVERSEAS SHIPMANAGEMENT SA AND/OR DINO ALBERTO V. ALFONSO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (5TH DIVISION) AND TEOFILO U. BERANO, JR., RESPONDENTS.

D E C I S I O N

LANTION, J.A.C., J.:

This *Petition for Certiorari*^[1] under Rule 65 of the Rules of Court seeks to annul and set aside the *Decision*^[2] dated 29 November 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 10-000948-13, NLRC NCR Case No. (M) 03-04172-12 and the *Resolution*^[3] dated 24 January 2014 denying the *Motion for Reconsideration*^[4] thereof. The decretal portion of the NLRC's *Decision* dated 29 November 2013 reads:

"**WHEREFORE**, premises considered, respondents' Appeal is **DENIED** for lack of merit. The Decision of the Labor Arbiter Veneranda C. Guerrero dated August 30, 2013 stands **AFFIRMED**."

SO ORDERED."^[5]

THE FACTS (As culled from the Records)

Private respondent Teofilo Berano, Jr., (hereafter private respondent) was contracted as a Fitter by petitioner Yialos Manning Services, Inc., (hereafter petitioner) for and in behalf of its foreign principal, Overseas Shipmanagement SA, to work on board the vessel "*M/V Thetis*" for a period of nine (9) months with a basic salary of US\$698.00 per month.^[6]

On 12 October 2012, private respondent left the Philippines and joined the vessel "*M/V Thetis*."

Private respondent's work as a fitter required him to work for eight (8) to sixteen (16) hours a day to ensure that the vessel would be seaworthy.

On 6 November 2012, private respondent was instructed by the Chief Engineer to repair the hydraulic hose in "Storage Number Six (6)". He had to use acetylene to remove the rusted bolts that held the ship's hydraulic hose. After several hours of doing the said task, private respondent lost consciousness causing him to collapse. The ship captain reported the incident to the company doctor based in Singapore and that private respondent was advised to drink plenty of water and take "Buscopan" and "Norfloxazine." From 7 November 2012 to 8 November 2012, the

ship captain monitored private respondent's condition in coordination with the company doctor.

On 9 November 2012, private respondent was referred to a medical facility in Indonesia wherein he was examined by a doctor and was found suffering from "OBS Febrs + Kolik Renal". The attending doctor declared private respondent unfit to work and recommended his immediate repatriation.

On 12 November 2012, private respondent was repatriated to Manila. Upon his arrival, he was referred to the Metropolitan Medical Center for treatment. In said hospital, private respondent was examined by the company-designated physician and was diagnosed with "Bilateral L5 Radiculopathy." Private respondent was recommended by the doctor to undergo rehabilitation therapy and medication.

Private respondent underwent three (3) months of therapy and medication but claims that he was unable to recover. However, the company-designated physician issued a certification declaring him "fit to resume sea duties as of 18 February 2013".^[7]

Unconvinced that he was fit to work, private respondent consulted Dr. Misael Jonathan Ticman who required him to undergo a series of laboratory examinations including an "MRI of the Lumbar Spine." Based on the lab results, private respondent was found to be suffering from "Degenerative Disc Disease, L5-S1 with Disc Protusion, Annul Tear and bilateral Facet Arthrosis causing Neuroforaminal Stenosis, Disc Bulge with Left Facet Arthrosis causing Neurofominal Stenosis L4L5". Dr. Ticman certified that the nature and extent of private respondent's condition make him unfit to work as a seaman.

In view of Dr. Ticman's findings, private respondent claimed disability benefits with petitioner Yalos Manning Services, Inc., but was refused. Thus, private respondent filed a Complaint for disability benefits and damages before the NLRC.

On 30 August 2013, Labor Arbiter Veneranda Guerrero rendered a Decision to wit:

"WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Yalos Manning Services, Inc., and/or foreign principal Overseas Shipmanagement SA to pay, jointly and severally, complainant Teofilo U. Berano, Jr., the amount of US DOLLARS SIXTY TWO THOUSANDS SEVEN HUNDRED NINETY TWO (US\$62,792.00) or its Philippine peso equivalent at the time of actual payment, representing total permanent disability benefits and sickness wages, plus ten percent (10%) thereof, as and for attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED."^[8]

Petitioners appealed the above Decision of the Labor Arbiter before the NLRC. On 29 November 2013, the NLRC rendered the assailed Decision.

Petitioners filed a *Motion for Reconsideration*^[9], but the same was denied.^[10]

Aggrieved, Petitioners are now before Us through the present recourse raising the following issues:

A.

WHETHER OR NOT PRIVATE RESPONDENT IS ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS.

B.

WHETHER OR NOT PRIVATE RESPONDENT IS ENTITLED TO ATTORNEY'S FEES.

THIS COURT'S RULING

Petitioners contend that the NLRC committed grave abuse of discretion when it ruled that private respondent was entitled to permanent and total disability benefits.

The petition is meritorious.

The entitlement of a seafarer on overseas employment to disability benefits is governed by the medical findings, by law and by the parties' contract. By law, the governing provisions are Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code, in relation to Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code.^[11] Since private respondent was deployed to work on the vessel *M/V Thetis* on 12 October 2012, by contract, the provisions of the 2010 POEA Standard Employment Contract which was adopted and implemented under POEA Governing Board Resolution No. 9 and POEA Memorandum Circular No. 10 (series of 2010) must govern.

The present controversy in this case centers on private respondent's claim for total permanent disability, thus, We find it necessary to define total and permanent disability as provided under Article 192(3)(1) of the Labor Code:

(3) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules.

In relation to this Labor Code provision, We also refer to Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code:

Sec. 2. Period of entitlement – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.