

FOURTEENTH DIVISION

[CA – G.R. SP No. 127550, March 14, 2014]

VIRJEN SHIPPING CORPORATION, NISSHO ODYSSEY SHIPMANAGEMENT AND/OR ERICSON MARQUEZ, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND EDDIE A. BABAC, RESPONDENTS.

D E C I S I O N

GALAPATE-LAGUILLES, J:

This petition for *certiorari* assails the Decision^[1] dated August 30, 2012 as well as the Resolution^[2] dated October 15, 2012 both rendered by public respondent National Labor Relations Commission (NLRC for brevity) awarding total and permanent disability benefits to private respondent Eddie A. Babac (Babac for brevity).

The facts as culled from the records are as follows:

On January 22, 2009, Virjen Shipping Corporation, a Philippine-registered manning agency, in behalf of its principal, Nissho Odyssey Ship Management, hired private respondent Babac to work as Chief Cook on board the vessel "M/T High Light" for a period of nine (9) months. The terms and conditions of the said contract of employment complied with the Philippine Overseas Employment Administration-Standard Contract for Seafarers (POEA-SEC).^[3] After being subjected to the mandatory Pre-Employment Medical Examination (PEME), Babac was declared fit for sea duty and commenced his functions as Chief Cook on July 7, 2009 on board at the Port of Tramandai, Brazil.

In his Position Paper^[4], Babac alleged that sometime in November 2009, while the vessel was sailing towards Brazil and while cleaning the meat room, he lifted thereat frozen meat weighing several kilos. The lifting caused him lower back pain.^[5] Despite the incident, he continued to perform his job but the pain persisted, causing him numbness. He sought medical treatment in a hospital in Santos, Brazil for hip and back pain on March 27, 2010. The attending physician therein diagnosed him to be suffering from *lumbociality* and was subsequently declared "unfit for duty".^[6]

Since there was no available personnel to replace him at the time and taking into account the fact that the vessel was Uruguay bound, Babac was not immediately repatriated^[7] but was instead advised to rest and to perform light tasks if able to do so with the assistance of some crew members.^[8] Babac was finally repatriated back to the Philippines on April 16, 2010 and arrived in Manila last April 21, 2010.^[9]

On April 22, 2010, Babac immediately consulted the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz for brevity), for treatment and management of his illness. Dr. Cruz thereafter issued a Medical Report stating the following:

The patient is a 38 year-old, chief cook who claimed he developed low back pain after doing heavy work since November 2009. He sought medical consult in Brazil last March 28, 2010 and was suspected to have lumbar disc herniation. He was given medication. He finished his contract and was referred to our clinic for further evaluation and treatment.

He was seen in our clinic today. There is low back pain with radiation to both legs. On physical examination, patient is conscious, coherent and ambulatory. There is discomfort in flexion of the back. X-ray of the lumbosacral spine was requested. He was referred to our orthopedic surgeon for evaluation and treatment.

Diagnosis:

Lumbosacral strain

R/o disc herniation^[10]

Dr. Cruz examined and treated Babac six more times and the procedures conducted were chronicled in various Reports dated April 23, 2010^[11], May 5, 2010^[12], May 19, 2010^[13], June 16, 2010^[14], July 21, 2010^[15] and August 18, 2010^[16]. In his September 29, 2010 Report, Dr. Cruz determined the degree of Babac's disability as follows:

1. The patient has reached maximum medical care.
2. The disability grading under the POEA schedule of disabilities is Grade 8 – moderate rigidity or two thirds (2/3) loss of motion or lifting power of trunk.
^[17]

While still undergoing treatment under Dr. Cruz's watch, Babac sought the medical opinion of Dr. Manuel Fidel M. Magtira (Dr. Magtira for brevity) of the Orthopaedic Surgery and Traumatology of Casa Medica, Inc. on July 30, 2010^[18]. Dr. Magtira's findings on Babac were essentially summarized in an undated Medical Report, as follows:

xxxx

The significance of this posterior bulge of the degenerated disc and canal stenosis is that this is the area where the nerves run that supply the extremities. This patient has been complaining of back pain. The vast majority of patients responded well to non-surgical treatment though. Probably the most important of which is time. That is to say, that no matter what is done, most cases of acute back and neck pain slowly resolve if given enough time to get better. Active interventions include

the use of medications, exercise/therapy, and activity modifications. If a long term and more permanent result are desired however, he should refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting. Things Mr. Babac is expected to do as a Seaman.

Some restriction must be placed on Mr. Babac's work activities. This is in order to prevent the impending sequelae (sic) of his current condition. He presently does not have the physical capacity to return to the type of work he has performing at the time of his injury. He is therefore permanently UNFIT in any capacity for further sea duties.^[19]

Babac thereafter went on to see another doctor in the person of Dr. Manuel Jacinto, Jr. (Dr. Jacinto for brevity) of the Orthopedic Surgery and Traumatology of the Sta. Teresita General Hospital last February 7, 2011. Dr. Jacinto's Medical Report dated February 7, 2011 stated the following:

Patient's condition on discharge: No improvement was noted on the patient.

Remarks: The patient's condition started at work and was aggravated by the performance of his duties with low back pain radiating to the posterior thigh, thus, he was assessed to be physically unfit to go back to work.^[20]

On April 6, 2011, Babac filed a Complaint^[21] against the petitioners before the Regional Arbitration Branch of the Department of Labor and Employment for Disability Benefit, Moral and Exemplary Damages and Attorney's Fees.

Petitioner resisted the claim arguing that Babac performed his work without any medical complaints until March 27, 2010 when he sought medical consultation in Santos, Brazil for 'hip and back pain'.^[22] It thus pointed out that the company-designated physician, Dr. Cruz, is solely authorized to determine or assess Babac's disability and that the latter was found to be not suffering from any of the conditions enumerated under Section 32 of the POEA Contract or to any impediment akin thereto.^[23] According further to the petitioner, the assessment made by Dr. Cruz was not only made within the allowable 240-day period, but it was the latter, as company physician, who actually managed and supervised Babac's physical condition and the subsequent medical assessment thereon was issued only after months of treatment.^[24]

Finding for the petitioner, the Labor Arbiter in a Decision^[25] dated April 30, 2012 upheld the disability grading of the company-designated physician disposing of the complaint as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents jointly and severally to pay complainant the amount of \$16,795 as disability benefits.

All other claims are dismissed for lack of factual and legal merit.

SO ORDERED.

Feeling aggrieved by the Decision, Babac appealed before public respondent NLRC and insisted on his claim for full and permanent disability benefits. Said public respondent in its Decision dated August 30, 2012 granted Babac's appeal and awarded the latter full disability benefits. The Decision's decretal portion reads:

WHEREFORE, all premises considered, the appealed Decision dated April 30, 2012 rendered by Labor Arbiter Eduardo G. Magno, is hereby AFFIRMED with MODIFICATIONS, ordering the respondents jointly and severally to pay the complainant the amount of \$60,000.00 as disability benefits, and 10% attorney's fees.

SO ORDERED. (emphasis supplied)

In a Resolution dated October 15, 2012,^[26] public respondent denied petitioner's motion for reconsideration.

Undaunted, petitioner is here before Us arguing that:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING TOTAL AND PERMANENT DISABILITY BENEFITS (OR THE AMOUNT OF \$60,000) TO PRIVATE RESPONDENT NOTWITHSTANDING THE GRADE 8 DISABILITY ASSESSMENT OF THE COMPANY PHYSICIAN WHICH HAS NOT BEEN DISPUTED WITH ANY CREDIBLE EVIDENCE.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING ATTORNEY'S FEES DESPITE ABSENCE OF ANY SHOWING THAT PETITIONERS ACTED WITH BAD FAITH

OR WERE MOTIVATED BY MALICE IN DENYING PRIVATE RESPONDENT'S EXAGGERATED CLAIM.

Petitioner argues in the main that public respondent NLRC erred in awarding full disability benefits to Babac. It insists that the findings of the company-designated physician should be upheld on the following grounds:

1. Under the POEA-SEC contract, the disability of Babac must be determined by the company-designated physician;
2. Babac was assessed to be suffering from Grade 8 disability after months of treatment by the company-designated physician; and
3. The disability assessment made by Dr. Cruz was made well within the 240-day period.

Babac on the other hand reiterates his prior arguments that he is entitled to an award of permanent disability benefits of sixty thousand dollars (US\$60,000.00) because the disability assessment was issued by the company-designated physician well beyond the 240-day limit set forth by the rules.

The lone issue for resolution is whether or not the public respondent committed grave abuse of discretion when it disregarded the disability grading of the petitioner's company-designated physician.

We grant the Petition.

There is no quibble that Babac's condition was work-related, hence he could be entitled to an award of disability benefits under existing laws and rules. Entitlement to disability benefits, however, is governed not only by relevant medical findings but also by law and contract. The relevant statutory provisions of the Labor Code, in relation to Section 2, Rule X of the Amended Rules on Employees Compensation (ECC) and the provisions of the Philippine Overseas Employment Administration-Standard Employment Contract Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA-SEC), are applicable to the resolution of the instant petition. Under the Labor Code, the following, among others, are disabilities that are deemed total and permanent:

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

c.2. xxxxx;^[27]

The rule(s) referred to above is Section 2(a), Rule X of the Amended Rules on Employees Compensation, viz:

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**