

TWELFTH DIVISION

[CA-G.R. SP. No. 131954, March 11, 2014]

MARIO C. BORJA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), NORTEAM SHIPPING SERVICES, INC., OMCI SHIPMANAGEMENT PVT LTD., AND MR. JULIO B. QUIBAN, JR., RESPONDENTS.

DECISION

DICDICAN, J.:

Before this Court is a Petition for *Certiorari*^[1] filed pursuant to Rule 65 of the Revised Rules of Court assailing, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the April 8, 2013 Decision^[2] of the National Labor Relations Commission (NLRC), First Division, in labor case docketed as NLRC NCR Case No. OFW(M) 04-05730-12 (NLRC LAC No. OFW(M) 01-000134-13) which modified the October 30, 2012 Decision^[3] of the Labor Arbiter. Also assailed in this petition is the July 11, 2013 Resolution^[4] of the same Commission which denied the Motion for Reconsideration filed by the petitioners.

The material and relevant facts, as culled from the record, are as follows:

Private respondent Norteam Shipping Services Inc. ("Norteam Shipping") is a Philippine manning agency, with its foreign principal, herein private respondent OMCI Ship Management Pvt Ltd. ("OMCI"). Private respondent Mr. Julito B. Quiban ("Quiban") is an officer of Norteam Shipping.

Petitioner Mario C. Borja ("petitioner") was hired by the private respondents as pumpman on board M/V Marida Marguerite for a stipulated period of nine (9) months^[5].

Prior to his deployment, the petitioner underwent a series of medical examinations wherein he was found to be "fit to work" by the company designated physician^[6].

On October 18, 2011, the petitioner departed Manila, Philippines to join his assigned vessel, M/V Marida Marguerite. Upon his embarkation, he immediately assumed his post as Pumpman and performed his duties without any incident.

However, on November 21, 2011, while the petitioner was attaching a heavy hose to a discharging area, his back hit a round bar while he was carrying a heavy equipment. The petitioner instantaneously felt excruciating pain on his back which dragged even after his working hours. Notwithstanding the pain, the petitioner still continued to perform his duties as Pumpman. However, the petitioner suffered from recurrence of pain with increased intensity. After several days, he encountered difficulty in standing or walking.

Concerned with the petitioner's condition, the Vessel Master coordinated with the private respondents and made arrangements for his needed medical attention. On November 24, 2011, the petitioner was brought to a hospital in Lome, Togo. After being examined, the petitioner was diagnosed as unfit for duty at sea by Dr. Gouta Davi K. Honoré^[7].

By reason of the foregoing, the petitioner was medically repatriated to the Philippines on December 1, 2011 for further evaluation and treatment. He was then referred to the company-accredited doctors at the Ygeia Medical Center Manila, Inc..

The petitioner was admitted at the Ygeia Medical Center, Inc. on December 2, 2011 wherein he underwent a series of tests to determine his medical condition. He was likewise given medications as he continued to experience severe lumbar pain. On December 3, 2011, his x-ray examination result showed that he had Predisposition to Lumboscaral Instability^[8]. His final diagnosis showed that he had Herniated Nucleus Pulposus^[9]. On December 8, 2011, he was discharged from the hospital since his condition had already improved. He was however advised to undergo physical therapy^[10].

The petitioner underwent a series of physical therapy sessions with the company-accredited doctor.

Unfortunately, despite the series of treatments, there was no improvement on the petitioner's condition. During his last check-up with Dr. Cichel M. Reyna, a company doctor, on April 4, 2012, or 122 days since his repatriation, his condition was diagnosed as Disc Disease L3-L2, L2-L3, L5-S1 with Radiculopathy^[11].

On the basis of the medical findings and on his incapacity to resume his sea duties after a period of 122 days, the petitioner demanded compensation from the private respondents for his permanent total disability. Unfortunately, the private respondents refused to heed the petitioner's demand.

On April 10, 2012, the company-designated physician gave the petitioner a Grade 11 assessment: Slightly rigid or one (1/3) loss of motion or lifting power of the trunk disability grade^[12].

Consequently, on April 16, 2012, the petitioner filed a complaint against the private respondents for payment of permanent total disability benefits, reimbursement of medical expenses, moral and exemplary damages and attorney's fees^[13].

After the filing of the complaint or on May 11, 2012, the petitioner sought for a second medical opinion from Dr. Rogelio P. Catapang, Jr. of the Sta. Teresita Hospital in Quezon City. Dr. Rogelio P. Catapang, Jr. confirmed that he had Predisposition to Lumboscaral Instability and was not fit to return to work^[14].

In denying their liability, the private respondents claim that the petitioner had no cause of action against them since there was no record of any medical report showing that he suffered from a work-related illness which rendered him permanently and totally disabled while on board the vessel. The private respondents further claim that the petitioner was not entitled to full disability benefits since, based on the assessment of their company doctor, the petitioner was issued a final disability assessment of Grade 11: Slightly rigid or one third (1/3) loss of motion or lifting power of the trunk, pursuant to Section 32 of the POEA Contract which merely

entitled him to disability benefits amounting to US\$7,645.00. However, the petitioner refused to accept the same. In the same manner, the private respondents denied any liability for medical expenses as they had shouldered all the medications and treatments of herein petitioner. With respect to damages and attorney's fees, the private respondents assert that, in the absence of malice and bad faith, they should not be held liable for the same.

As all efforts to reach an amicable settlement proved futile during the conciliation conference conducted by the Labor Arbiter, the case underwent proceedings to determine the merit of petitioner's complaint. The parties were made to submit their respective position papers and evidence in support thereof which they did dutifully submit.

After considering the arguments of both parties, Labor Arbiter Virginia T. Luyas-Azarraga rendered a Decision dated October 30, 2012¹⁵ finding the private respondents liable to the petitioner for his permanent total disability benefits. The dispositive portion of the said decision stated as follows:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered directing respondents jointly and severally to pay complainant U.S.\$60,000.00 or its peso equivalent at the time of payment, representing his permanent total disability benefits, plus 10% of the total award as attorney's fees.

"SO ORDERED."

The Labor Arbiter ruled that, notwithstanding the company-designated physician's assessment of a Grade 11 disability impediment, the petitioner's disability was permanent and total since he was not able to perform his job for more than 120 days.

Dissatisfied, the private respondents appealed from the decision of the Labor Arbiter to the NLRC.

On April 8, 2013, the NLRC, First Division, rendered the assailed Decision^[16] which modified the decision of the Labor Arbiter, to wit:

"WHEREFORE, premises considered, the appealed Decision is MODIFIED. Complainant is declared to be entitled only to US\$7,465.00, corresponding to Grade 11 disability assessment under Section 32 of the POEA Standard Employment Contract. The award of attorney's fees is likewise DELETED for lack of legal basis.

"SO ORDERED."

According to the NLRC, the petitioner was not entitled to permanent total disability benefits as he failed to qualify therefor. The NLRC ruled that, when a treatment exceeds 120 days, it does not automatically entitle a seafarer to Grade 1 disability benefits. Moreover, the NLRC upheld the Grade 11 disability assessment of the company-designated physician of the private respondents on the ground that their report showed a detailed treatment and evaluation of the petitioner's condition over a period of time. Contrary to the one-time consultation that the petitioner did with his doctor of choice, Dr. Catapang, who also based his evaluation on the MRI and the x-ray performed upon the petitioner by the company-designated physicians, the

latter were in a far better position to evaluate the petitioner's medical condition. Also, the petitioner's belated act of consulting another physician only after he filed a complaint with the Labor Arbiter negated the basis of his claim for permanent total disability benefits.

The petitioner filed a Motion for Reconsideration of the decision of the NLRC but the said motion was denied in a Resolution¹⁷ dated July 11, 2013, viz:

"Acting on the Motion for Reconsideration filed by complainant dated May 5, 2013 relative to the Decision issued by this Commission dated April 8, 2013, We resolve to DENY the same as the motion raised no new matters of substance which would warrant reconsideration of the Decision of this Commission.

"SO ORDERED."

Unstirred by the foregoing disposition of the NLRC, the petitioner filed the instant petition with this Court assigning the following acts of grave abuse of discretion which were purportedly committed by the NLRC:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECIDING QUESTIONS OF SUBSTANCE IN A WAY WHICH IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE WHEN IT INCORRECTLY FAILED TO CONSIDER THE FACT THAT THE PETITIONER WAS SUFFERING FROM PERMANENT TOTAL DISABILITY AND NOT A PARTIAL DISABILITY AT A GRADE 11 RATING.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECIDING QUESTIONS OF SUBSTANCE IN A WAY WHICH IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE WHEN IT INACCURATELY RELIED SOLELY ON THE SCHEDULE OF DISABILITY OR IMPEDIMENT AS STATED IN THE POEA STANDARD EMPLOYMENT CONTRACT.

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECIDING QUESTIONS OF SUBSTANCE IN A WAY WHICH IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE WHEN IT ERRONEOUSLY ACCORDED GREATER WEIGHT ON THE ASSESSMENT OF THE COMPANY DOCTOR.

IV.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DECIDING QUESTIONS OF SUBSTANCE IN A WAY WHICH IS NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE WHEN IT IMPROPERLY

FAILED TO DISCERN THAT THE FACTUAL CIRCUMSTANCES OF THE CASE
ENTAIL AN AWARD OF DAMAGES AND ATTORNEY'S FEES.

In sum, the primordial issue brought before this Court for resolution is whether or not the petitioner was entitled to permanent total disability benefits from the private respondents, contrary to the findings of the company-designated physician's assessment of a Grade 11 disability level.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be devoid of merit.

The petitioner contends that it was inaccurate for the NLRC to state that he had not suffered a total disability just because the company doctor, or even his doctor of choice, classified his disability in relation to his physical impediment only. For the petitioner, the true determinant that to determine whether he suffered from a permanent total disability is the fact that he was unable to perform his customary work as Pumpman for more than 120 days.

There is no dispute that the petitioner's injury is work-related and that he is entitled to disability benefits. The bone of contention is how to classify such injury in order to determine the amount of benefits due to him.

The contention of the petitioner that he is entitled to a permanent total disability benefit, as he was unable to perform his job for more than 120 days, is not totally correct. This issue had been clarified in *Jesus Vergara v. Hammonia Maritime Services*^[18] where it was ruled that the standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with Philippine laws, particularly Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

In the case of *Magsaysay Maritime Corp. v. Lobusta*^[19], the Supreme Court also referred to, and applied, the ruling in Vergara case in this manner:

"Article 192(c)(1) under Title II, Book IV of the Labor Code, as amended, reads:

ART. 192. Permanent total disability. – x x x

x x x

(c) 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 in the Rules;

x x x x

"Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, or the Amended Rules on Employees' Compensation Commission (ECC Rules), reads: