

ELEVENTH DIVISION

[CA-G.R. SP. NO. 124642, April 22, 2014]

SANTIAGO L. MAKABENTA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), AND MAUNLAD TRANS, INC. AND/ OR CARNIVAL CRUISE LINES, INC. AND RONALDO MANALIGOD, RESPONDENTS.

D E C I S I O N

ANTONIO-VALENZUELA, J.:

This is the Petition For Certiorari^[1] filed by Santiago L. Makabenta ("petitioner Makabenta"), imputing grave abuse of discretion on the part of the National Labor Relations Commission, Third Division ("NLRC") for issuing the Resolutions dated 24 January 2012,^[2] and 7 March 2012^[3] ("assailed Resolutions").

The facts are as follows: In 2009, private respondent Maunlad Corporation hired petitioner Makabenta to work as a waiter on board the M/S Carnival Paradise. The Certificate of Fitness for Work dated 7 April 2009^[4] was issued, finding petitioner Makabenta fit for sea duties. Petitioner Makabenta and private respondent Maunlad Corporation, through its Operations Manager Jose Dax Dennis C. Castro, executed the Contract of Employment dated 2 June 2009^[5] (under the following relevant provisions: petitioner Makabenta would work for Seachest Associates/private respondent Carnival Corporation on the vessel M/S Carnival Paradise for six (6) months, and forty-eight (48) hours a week, as the team head waiter; basic monthly salary was \$45.00, with a guaranteed monthly pay of \$1,200.00). On 15 June 2009, petitioner Makabenta began working as team headwaiter on board the MS Carnival Destiny.^[6] On 26 October 2009, while onboard the MS Carnival Destiny, petitioner Makabenta experienced severe right upper abdominal pain, as reported in the Crew Illness Log.^[7] On 27 October 2009, while on board the MS Carnival Destiny, petitioner Makabenta was diagnosed with "Pain RUQ-lateral chest-pleuritic Occult hematuria."^[8] Petitioner Makabenta received medical attention when the ship docked in Miami, Florida, U.S.A., Dr. R. Nieves, a company-designated physician, with specialty as a general surgeon, executed Medical Shoreside Attendance Form dated 7 November 2009,^[9] indicating the findings of the medical treatment (i.e., petitioner Makabenta experienced low back pain/ right flank pain; petitioner Makabenta needed medical care, but was fit to travel; and specified limitations on the lifting, pulling, or pushing activities of petitioner Makabenta; a lumbar spine MRI was requested). On 12 November 2009, petitioner Makabenta was repatriated to the Philippines for further medical tests and treatment. The tests done on petitioner Makabenta were as follows: Computed Tomography Scan dated 16 November 2009^[10] (findings: "GRADE I ANTERIOR LISTHESIS OF L5 OVER S1, EVIDENCE OF SAME LEVEL DISC DISEASE WITH TRACTION HERNIATION. SECONDARY MODERATE CANAL AND BILATERAL NEURAL FORAMINAL COMPROMISE EVIDENT"); X-Ray Report dated 16 November 2009^[11] (findings: "LUMBO SACRAL SPINE: Osteophytes

are seen along the anterior and lateral margins of the lumbar vertebral bodies; slight compression deformity of L5; forward displacement of L5 over S1. The rest of the vertebral height, pedicles and disc spaces are intact; IMPRESSION: DEGENERATIVE HYPERTROPHIC CHANGES, LUMBAR SPINE. MILD COMPRESSION DEFORMITY, L5. GRADE I SPONDYLOLISTHESIS, L5 OVER S1"); the MRI of the Lumbar Spine dated 18 November 2009^[12] (findings: Impression: 1. Grade II L5-S1 anterolisthesis secondary to chronic bilateral L5 spondylolysis, causing severe right-sided and mild to moderate left-sided foraminal narrowing. 2. Mild L2-3, L3-4, and L4-5 disc bulges"); X-Ray Report dated 8 January 2010^[13] (findings: IMPRESSION: GRADE I SPONDYLOLISTHESIS. DEGENERATIVE CHANGES, LUMBAR SPINE. MILD COMPRESSION DEFORMITY. L5 VERTEBRAL BODY."). The Discharge Summary/Hospital Abstract^[14] prepared by Dr. Robert D. Lim and Dr. Mylene Cruz-Balbon, company-designated physicians, stated: petitioner Makabenta was confined at the Metropolitan Medical Center from 16 January 2010 to 1 February 2010, and diagnosed with "umbilical hernia; s/p umbilical herniorrhaphy with mesh; Grade II L5-S1 anterolisthesis with mild to severe foraminal narrowing; s/p posterior decompression, instrumentation and fusion with posterolateral bone grafting;" petitioner Makabenta was prescribed various medicines and was advised to undergo therapy. (N.B. None of the documents executed by the company-designated physicians stated petitioner Makabenta was suffering from a permanent disability). Private respondents did not re-hire petitioner Makabenta after his medical repatriation to the Philippines.

Petitioner Makabenta filed the Complaint^[15] for permanent total disability benefits against the private respondent Maunlad Corporation, the private respondent Carnival Corporation, and Ronaldo Manaligod, before the Labor Arbiter, docketed as NLRC OFW Case No. (M) 04-05135-10.

In the Decision dated 28 September 2010,^[16] the Labor Arbiter ruled in favor of petitioner Makabenta. The dispositive portion of the Labor Arbiter's Decision read:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents Maunlad Trans, Inc./ Carnival Cruise Lines, Inc./ Ronaldo Manaligod to pay complainant Santiago L. Makabenta the amount of SIXTY SIX THOUSAND US DOLLARS (US\$66,000.00) or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits and attorney's fees.

All other claims are **DISMISSED** for lack of merit.

SO ORDERED.

The Labor Arbiter found that: on 26 October 2009, petitioner Makabenta suffered severe low back pain/ right flank pain while on board the vessel and during the effectivity of his employment contract; petitioner Makabenta received medical treatment and was repatriated to the Philippines on 12 November 2009; due to the injury sustained by petitioner Makabenta while on board the vessel, he was not able to work for more than 120 days, thus, he was permanently disabled and was entitled to full coverage under the POEA approved employment contracts.

The private respondents filed an appeal. In the assailed Resolution promulgated 24 January 2012,^[17] the NLRC set aside the ruling of the Labor Arbiter, and dismissed

the Complaint for lack of merit. The dispositive portion of the assailed Resolution read:

WHEREFORE, premises considered, respondents-appellants' appeal is GRANTED. The Decision dated September 28, 2011 is VACATED and SET ASIDE and a new one is entered dismissing the complaint for lack of merit.

On 7 March 2012, the NLRC issued the assailed Resolution,^[18] denying the motion for reconsideration filed by petitioner Makabenta.

Thus, this Petition for Certiorari, making the following assignment of errors:

I

THERE IS PRIMA FACIE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF PUBLIC RESPONDENT NLRC IN RULING THAT PETITIONER'S LUMBAR INJURY IS NOT WORK-RELATED.

II

THERE IS PRIMA FACIE ABUSE OF DISCRETION ON THE PART OF THE HONORABLE PUBLIC RESPONDENT IN DECLARING THAT PETITIONER IS NOT ENTITLED TO DISABILITY COMPENSATION DESPITE THE CLEAR SHOWING THAT HE SUSTAINED LUMBAR INJURY WHILE WORKING ON BOARD THE VESSEL OF RESPONDENTS.

III

THERE IS PRIMA FACIE ABUSE OF DISCRETION ON THE PART OF THE HONORABLE PUBLIC RESPONDENT WHEN IT UNREASONABLY IGNORED THE OVERWHELMING EVIDENCE IN SUPPORT OF PETITIONER'S ENTITLEMENT TO MAXIMUM DISABILITY BENEFITS IN THE AMOUNT OF US\$60,000.00.

(A) PETITIONER IS TOTALLY AND PERMANENTLY DISABLED CONSIDERING THAT HE COULD NO LONGER RETURN TO WORK AS A SEAFARER, THE JOB HE WAS ACCUSTOMED TO PERFORM.

(B) CONTRARY TO THE FINDINGS OF THE COMPANY-DESIGNATED DOCTOR, PETITIONER'S ILLNESS IS CLEARLY WORK-RELATED. AS A MATTER OF FACT, EVEN BEFORE PETITIONER BOARDED THE VESSEL HE WAS SUBJECTED TO A PRE-EMPLOYMENT MEDICAL EXAMINATION, WHERE THE COMPANY DOCTORS DECLARED HIM FIT TO WORK.

(C) PETITIONER IS SUFFERING FROM TOTAL AND PERMANENT DISABILITY SINCE HE REMAINS INCAPACITATED FOR A PERIOD OF MORE THAN 240 DAYS.

IV

THERE IS PRIMA FACIE ABUSE OF DISCRETION ON THE PART OF THE HONORABLE PUBLIC RESPONDENT IN DISMISSING

PETITIONER'S CLAIM FOR PAYMENT OF MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES DESPITE RESPONDENTS' BRAZEN DISREGARD TO COMPLY WITH THEIR CONTRACTUAL OBLIGATIONS.

V

THE DECISION OF THE HONORABLE PUBLIC RESPONDENT CONTAINS SERIOUS ERRORS IN ITS FINDINGS OF FACTS AND LAW WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO PETITIONER.

The issues are: 1) whether the NLRC committed grave abuse of discretion in ruling that petitioner Makabenta is not entitled to permanent disability benefits; 2) whether petitioner Makabenta is entitled to sickness allowance; and 3) whether petitioner Makabenta is entitled to moral and exemplary damages, and attorney's fees, with legal interest.

PETITION FOR CERTIORARI^[19]

As to the first issue, the Petition answers in the affirmative. The NLRC committed grave abuse of discretion in ruling that petitioner Makabenta is not entitled to permanent disability benefits.

The Petition^[20] thrusts: petitioner Makabenta's lumbar injury or back injury could not have been caused by hernia, as ruled by the NLRC; the medical results show that petitioner Makabenta is incapacitated to perform his usual tasks as a seaman because of the injury he sustained while on board the vessel of private respondents, and during the performance of his duties; the gravity of petitioner Makabenta's injury is undisputed, *i.e.*, the medical records show petitioner Makabenta suffered a total and permanent injury; permanent total disability means disablement of an employee to earn wages in the same kind of work or work of a similar nature that he was trained for or accustomed to perform; petitioner Makabenta can no longer go back to active sea duties because of the injury he suffered; petitioner Makabenta has not been able to get any meaningful employment since his repatriation; petitioner Makabenta is entitled to the maximum disability benefits in the amount of \$60,000.00, in accordance with the Philippines Overseas Employment Agency ("POEA") Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels or the POEA Standard Employment Contract, because petitioner Makabenta could not anymore be declared fit to work for sea duties; petitioner Makabenta's illness lasted for more than 120 days; under the Labor Code of the Philippines, if by reason of the injury or sickness he sustained, the employee is unable to perform his customary job for a continuous period exceeding 120 days, then the said employee suffers from a permanent total disability, hence, petitioner Makabenta is entitled to permanent disability benefits.

Regarding the second issue, the Petition answers in the affirmative. Petitioner Makabenta is entitled to sickness allowance.

The Petition for Certiorari^[21] thrusts: the POEA Contract provides that when the seafarer undergoes 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 permanent disability has been assessed by the company-designated physician, but

in no case shall this period exceed one hundred twenty days; petitioner Makabenta was earning a basic monthly salary of US\$45.00; petitioner Makabenta was repatriated to the Philippines for medical treatment; petitioner Makabenta was not employed by private respondents for more than 120 days since his repatriation, hence, petitioner Makabenta is entitled to sickness allowance in the amount of US\$ 180.00, for the 120 days he underwent medical treatment.

Anent the third issue, the Petition answers in the affirmative. Petitioner Makabenta is entitled to moral and exemplary damages, and attorney's fees, with legal interest.

The Petition for Certiorari^[22] thrusts: petitioner Makabenta's permanent disability was the direct result of the demands of his employment; private respondents have acted in bad faith by refusing to pay the amounts due to petitioner Makabenta; the inability of petitioner Makabenta to work and collect the amounts due to him, caused petitioner Makabenta to have severe depression and anxiety, hence, private respondents are liable to pay petitioner Makabenta P50,000.00, as moral damages; private respondents are also liable to pay P50,000.00, as exemplary damages, to serve as an example and for the public good; private respondents are also liable to pay attorney's fees because petitioner Makabenta was forced to institute the case against private respondents, and hire an attorney to enforce and protect his rights; private respondents are liable to pay petitioner Makabenta attorney's fees equivalent to 10% of all his total monetary claims.

COMMENT (TO THE PETITION FOR CERTIORARI)^[23]

As to the first issue, the private respondents answer in the negative. The NLRC did not commit grave abuse of discretion in ruling that petitioner Makabenta is not entitled to permanent disability benefits.

The Comment (to the Petition for Certiorari)^[24] parries: petitioner Makabenta failed to prove that his illness is work-related, and mere allegations without substantial medical evidence cannot be the basis to conclude that the illness is work-related; the basis of petitioner Makabenta in claiming disability payments is outdated, because the new rule now is that if the seafarer (like petitioner Makabenta) files a claim for disability benefits based on the provisions of the amended POEA Contract, his degree of disability should be classified based on the Schedule of Disability enumerated in Section 30 of the amended POEA Contract; Section 30 of the amended POEA Contract shows that only seafarers who are classified under Grade 1 shall be considered to have suffered total and permanent disability; jurisprudence provides that an illness which lasts for more than 120 days does not mean that the seafarer is suffering from a Grade 1 disability, and that the assessment of a doctor, company-designated or otherwise, is the measure of the degree of disability suffered by the seafarer; petitioner Makabenta did not submit any medical report which would substantiate his allegation that his injury is a Grade 1 disability; petitioner Makabenta is not entitled to permanent disability award because to be entitled to the maximum permanent disability benefit of US\$60,000.00, the petitioner Makabenta should prove that he is suffering from a Grade 1 disability, and petitioner Makabenta failed to present evidence to support his claim that he is suffering from a Grade 1 disability; the company-designated physician who treated petitioner Makabenta's injury after his repatriation, declared petitioner Makabenta fit to work after the medical treatment, and the assessment of the company-designated physician should be given more weight than the doctor who treated petitioner Makabenta only for one day (the physician who treated petitioner