

SPECIAL SECOND DIVISION

[CA-G.R. SP No. 131746, June 25, 2014]

MAGSAYSAY MARITIME CORP., PRINCESS CRUISE LINES AND MR. MARLON R. ROÑO, PETITIONERS, V. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND JUAN CARLOS QUIJANO, RESPONDENTS.

D E C I S I O N

BRUSELAS, JR. J.:

Before us is a *Petition for Certiorari* filed by the petitioners pursuant to Rule 65 against the Decision^[1] of the National Labor Relations Commission (NLRC) which affirmed the Decision^[2] of the Labor Arbiter dated 26 March 2013. The dispositive portion of the NLRC decision is herein quoted as follows:

"WHEREFORE, the appeal filed by respondents is hereby DENIED for lack of merit. The decision dated 13 December 2010 (sic) is AFFIRMED.

SO ORDERED."^[3]

Likewise assailed is the Resolution^[4] dated 28 June 2013 which denied the petitioners' motion for reconsideration for lack of merit.

The pertinent and relevant facts, as culled from the documentary submissions, are as follows:

The respondent Juan Carlos Quijano (Quijano) was employed by the petitioner Magsaysay Maritime Corp. (MMC) for and in behalf of its foreign principal, petitioner Princess Cruise Lines (PCL), as Bar Steward under a ten-month contract^[5] dated 15 April 2011. He had a basic monthly salary of US\$332.00, guaranteed overtime pay of US\$343.00 per month and leave pay of US\$50.00 per month. One month after he boarded the vessel Crown Princess-Hotel, Quijano noticed blood on the tip of the cotton bud while cleaning his left ear. After he consulted the ship doctor, he took a series of medications while on board. On 10 December 2011, he disembarked from the vessel and arrived in the country on 12 December 2011. He immediately reported to the company-designated physician on 13 December 2011 for an examination. Quijano was examined thrice between 13 December 2011 and 20 December 2011 under the care of an ENT specialist and was advised to take a Computed Tomography (CT) scan of his cranium. On his last visit on 20 December 2011, the company-designated physician noted that the CT scan showed "unremarkable" result and he was advised to continue his medications. His condition had been declared to be not work-related.

Unsatisfied with the findings of the company-designated physician, Quijano decided to consult another doctor, Dr. Charlotte M. Chiong, at the UP-Philippine General Hospital (PGH) for a second opinion. Dr. Chiong diagnosed Quijano with a skull base

tumor. The Magnetic Resonance Imaging (MRI) impression showed that he had "*left temporal fossa meningioma and left acoustic schwannoma*" and the CT scan revealed that Quijano had "*otomastoiditis, left possible middle and external ear cholesteatoma formation*".^[6] Because of the said findings, Quijano underwent "*transtemporal subtotal petrosectomy excision of the skull base and CP angle tumor, left under general anesthesia*" last 21 March 2012. After the surgery, the histopathologic report showed that Quijano had "*adenoid cystic carcinoma with bone involvement*"^[7] which required radiation therapy. In a Medical Evaluation Report^[8] dated 01 August 2012, Dr. Elinor Diola-De Jesus declared Quijano to be "not fit for further sea duty permanently in whatever capacity with a permanent total disability." On 04 June 2012, Quijano filed a complaint for permanent total disability compensation, sickness allowance, refund of medical expenses and attorney's fees against the petitioners. Because of a failure to settle the case amicably, the parties were directed by the Labor Arbiter to file their respective position papers.

In his position paper^[9], Quijano averred that he had been on board ocean-going cruise ships since August 2006 and had never experienced illness or injury while on board except with his last contract with the petitioners. The pain that he had suffered in his left ear was not caused by a forceful cleaning. He immediately consulted the ship doctor Dr. Laura Teichmann and his condition had been assessed as "*refractory left sided otitis externa with possible extension into the middle and inner ear*" and was prescribed medicines for temporary relief and treatment.^[10] Aside from the pain in his left ear, Quijano had also experienced Bell's palsy, myalgia, fatigue and intermittent episodes of dizziness or vertigo. Such health condition had been assessed by the ship doctor as a result of having been working outdoors in very hot, humid weather."^[11] Quijano alleged that his inability to continue his employment and consequent disability had been connected to or aggravated by his work. The aggravation had been caused by insufficient medical attention and that, despite his deteriorating condition, he was still required to report for work. Consequently, the senior ship doctor, Dr. Mark Mason ordered Quijano's medical repatriation.

Upon his arrival in the Philippines, he immediately reported to the company-designated physician Dr. Esther G. Go who had examined and had treated him for less than a month. Thereafter, he was told, "*ok na tenga mo, continue lang antibiotic at ear drops*."^[12] Quijano knew the real condition of his condition when he consulted Dr. Chiong and further examinations revealed that he had a malignant skull base tumor. While Quijano was under treatment he regularly reported to the petitioners' office and informed them about his medication and medical expenses. The petitioners assured him that he would be reimbursed of his expenses. Quijano had incurred P420,000.00 for the surgery^[13] and the radiation therapies and other treatments at the Philippine Oncology Center Corp. had cost him P61,800.00.^[14] Despite submission of pertinent documents for reimbursement, petitioner MMC paid Quijano only P40,000.00. As to his sickness allowance, he was given only the amount of US\$100.00.

The petitioners, for their part, averred that Quijano could not validly claim for full disability benefits under the POEA Standard Contract because he had failed to show proof that his illness was work-related. First, he had embarked on an ordinary cruise line and, second, he had not been exposed to harmful working conditions that may have caused or aggravated his condition. Quijano's illness or *chronic otitis externa*

and media, which occurred sometime a month after he embarked the vessel, could be attributed to his improper grooming. The petitioners insisted that the presumption of work-relatedness had been negated by the fact that the company-designated physician declared Quijano's illness to be 'not work-related'. Consequently, Quijano had no factual and legal bases to be reimbursed of his medical expenses. Anent the sickness allowance, the petitioners asserted that Quijano had already been paid as shown on the vouchers^[15] attached to their position paper. The petitioners further asserted that Quijano erroneously impleaded petitioner Marlon Roño being merely an officer of petitioner MMC which had a separate and distinct personality from its officers/stockholders.

Via her 26 March 2013 decision, the Labor Arbiter held that Quijano was entitled to permanent total disability benefits in the sum of US\$60,000.00, moral damages, reimbursement for medical expenses, sickness allowance and attorney's fees. The Labor Arbiter ratiocinated as follows:

"In the instant case, the only piece of evidence submitted by the respondents in support of the contention that the complainant's illnesses are not work-related is the above-mentioned final report of the company-designated physician stating that "patient's ear condition is not work-related." It is doubtful that the report in question is a well-grounded, fair and objective assessment of the complainant's condition. While the above-quoted provision of the POEA SEC provides for a maximum 120-day period (which was increased to 240 days in *Vergara vs. Hammonia Maritime Services, Inc.*, GR No. 172933, October 6, 2008) within which the company-designated physician is required to assess the seafarer's fitness for work or the degree of his disability, the company-designated physician in the instant case declared the complainant's condition to be not work-related in a record-breaking span of seven (7) days. Never has a company-designated physician dealt with a seafarer's medical problem so swiftly. Moreover, under the above-quoted provision of the POEA SEC, the company-designated physician is tasked to determine the seafarer's fitness for work or degree of disability, which the company-designated physician in the instant case completely failed to do. Furthermore, as stated earlier, the company-designated physician in the instant case reported that the complainant's CT scan was "unremarkable" (records, p. 85); two (2) months later, a second CT scan revealed that the complainant had cancer (records, p. 41). Following the ruling in *Andrada vs. Agemar Manning Agency*, GR No. 194758, October 24, 2012, the abovementioned report of the company-designated physician cannot be given any weight since it is not supported by diagnostic tests and procedures. All told, the company-designated physician's declaration that the complainant's condition is not work-related is not convincing and falls far short of substantial evidence. Thus, the disputable presumption that the complainant's cancer is work-related has not been overcome. It must therefore be concluded that the complainant's illnesses – acoustic schwannoma – is work-related. As there is no question that he may no longer work as a seafarer, there is no reason why he may not recover permanent and total disability compensation.

It is common knowledge that time is of the essence in the treatment and management of cancer. In the instant case, the medical report (records, p. 77) dated October 13, 2011 rendered by a physician who examined the complainant in France shows that the latter was advised to undergo a CT scan should his condition fail to improve. The ship doctor made the same recommendation in the above-quoted report dated December 9, 2011. It was only on or about December 16, 2011 that the respondents, through the company-designated physician, arranged for a CT scan to be undertaken by the complainant. As stated earlier, the respondents did not submit the result, or report, on that CT scan. By the time the complainant underwent a second CT scan at the UP-PGH, the cancer had metastasized, or spread, to his bone (records, pp. 40-41). It cannot be gainsaid under the circumstances, that in violation of paragraph 2, Section 20 of the POEA-SEC, which was quoted earlier, the respondents failed to give the complainant timely, competent and adequate medical attention, which resulted in the rapid deterioration of his health. This, and the company-designated physician's swift and cursory handling of the complainant's illness, which is contrary to public policy, justify an award of moral damages in his favor."^[16]

On appeal, the petitioners argued that the medical findings of the company-designated physician and other doctors deserve to be given credence because they had spent sufficient time and effort in carrying out an extensive management for the treatment of Quijano's illness. While the petitioners were cognizant of the illness suffered by Quijano, the same did not *ipso facto* entitle the latter to permanent disability benefits without compliance with the grading provided under the POEA-SEC or being considered permanently unfit under the CBA. The petitioners asserted that, absent proof showing that the findings of the company-designated physician had been biased and self-serving, Quijano miserably failed to overcome the assessment of their doctor that his illness was not work-related.

In the assailed decision rendered by the NLRC, the appeal of the petitioners was denied for lack of merit. The NLRC emphasized that, regardless of the ear condition or illness of Quijano not being listed as an occupational disease, the same was disputably work-related; thus, the petitioners had the burden to establish that there was no causal connection between the job and the illness of Quijano. As to the medical expenses and sickness allowance, the NLRC declared that Quijano was entitled to sickness allowance while he underwent medical procedures and treatments in line with the finding that Quijano's illness was work-related. The reimbursement of medical expenses was also found to be with substantial basis upon submission of valid and convincing proof of the actual amount incurred. The award of moral damages and attorney's fees in favor of Quijano was also sustained by the NLRC for being justified because the petitioners failed to give him seasonable and proper medical attention which resulted in the fast decline of his health. Consequently, Quijano's claim for disability benefits was found to be with factual and lawful bases.

Aggrieved, the petitioners come to us via this petition for *certiorari* which ascribes to the NLRC the following acts allegedly amounting to grave abuse of discretion, to wit:

I.

IN HOLDING THAT PRIVATE RESPONDENT IS ENTITLED TO US\$60,000.00.

II.

WHEN IT HELD PETITIONERS LIABLE FOR FURTHER MEDICAL REIMBURSEMENTS AND SICKNESS ALLOWANCE DESPITE THE COMPANY-DESIGNATED PHYSICIAN'S FINDING THAT SEAFARER'S ILLNESS WAS NOT WORK-RELATED.

III.

WHEN IT AWARDED ATTORNEY'S FEES EQUIVALENT TO 10% OF THE TOTAL MONETARY AWARD AND MORAL DAMAGES DESPITE THE FACT THAT PETITIONERS NEVER ACTED WITH BAD FAITH IN DEALING WITH PRIVATE RESPONDENT IN THE DENIAL OF HIS CLAIMS."

The petitioners are fundamentally assailing the findings of both the Labor Arbiter and NLRC and anchor their objection to the grant of disability benefits to Quijano upon the declaration of the company-designated physician that Quijano's illness was not work-related. They claim that Quijano rendered his services as Bar Steward in an ordinary cruise line where he was not exposed to harmful working conditions that may have caused or aggravated his condition; that nothing in his duties as Bar Steward would show any relation or risk factor that may result to his illness.

The petition has no merit.

The appellate court's jurisdiction to review a decision of the NLRC in a petition for *certiorari* is confined to issues of jurisdiction or grave abuse of discretion.^[17] In *certiorari* proceedings under Rule 65, questions of fact are not generally permitted, the inquiry being limited essentially to whether or not the respondent tribunal acted without or in excess of its jurisdiction.^[18] Further, the factual findings of the NLRC affirming those of the Labor Arbiter, when devoid of any unfairness or arbitrariness, are accorded respect if not finality by us.^[19]

Because the employment contract between the petitioners and Quijano was signed on 15 April 2011^[20], deemed read and incorporated into the same are the provisions of the 2010 Philippine Overseas Employment Administration (POEA) Amended Standard Terms and Conditions governing seafarers^[21]. Section 20(A) of the said memorandum reads:

"SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

xxx xxx xxx

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of