

## **SPECIAL TWELFTH DIVISION**

**[ CA–G.R. SP. No. 134500, June 09, 2014 ]**

**HEIRS OF THE LATE DARIO DIAZ, REPRESENTED BY HIS WIFE,  
GLORIA M. DIAZ, PETITIONERS, VS. NATIONAL LABOR  
RELATIONS COMMISSION, DOLPHIN SHIP MANAGEMENT, INC.,  
ALAMAT SHIPPING CORP. AND MARCELO R. RANESES,  
RESPONDENTS.**

### **D E C I S I O N**

**DICDICAN, J.:**

Before this Court is a Petition for *Certiorari*<sup>[1]</sup> 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 November 15, 2013 Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC), Sixth Division, in labor case docketed as NLRC LAC No. OFW(M) 08-000766-13 (NLRC NCR Case No. (M) 12-18102-12) which affirmed the June 28, 2013 Decision<sup>[3]</sup> of the Labor Arbiter. Also assailed in this petition is the December 27, 2013 Resolution<sup>[4]</sup> of the same Commission which denied the Motion for Reconsideration filed by the petitioner.

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

Private respondent Dolphin Ship Management, Inc. ("Dolphin Ship Management") is a Philippine manning agency, with its foreign principal, herein private respondent Alamat Shipping Corporation, ("Alamat Shipping"). Private respondent Mr. Marcelo R. Raneses ("Raneses") is an officer of Dolphin Ship.

Petitioner Gloria M. Diaz ("Gloria") is the surviving spouse and legal heir of the deceased Dario T. Diaz ("Dario"). Dario was hired by the private respondents as Chief Cook on board M/V Herefore Express on January 5, 2011 for a stipulated period of six (6) months<sup>[5]</sup>.

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

Allegedly, Dario was already experiencing difficulty in breathing when he was on board the vessel but he did not report the same to the captain.

After six months from the time he boarded the vessel, Dario's contract with the private respondent lapsed. He arrived in the Philippines on August 12, 2011.

While in the Philippines, Dario allegedly suffered from a heart attack as shown by an undated clinical abstract issued by Dr. Theserie B. Evangelista ("Dr. Evangelista")<sup>[6]</sup>.

On December 15, 2011, a cardiology report<sup>[7]</sup> prepared by Dr. Romeo Meriño declared that Dario was not fit to work.

Unfortunately, on August 8, 2012, Dario died with the following causes indicated in his death certificate<sup>[8]</sup>:

Immediate cause: Cardiac arrest

Antecedent cause: Status Asthmaticus

Underlying cause: Bronchial Asthma

For the refusal of the private respondents to pay for the death benefits to which Dario's legal heirs were allegedly entitled to under the POEA contract, the petitioner, on December 14, 2012, filed a complaint against the private respondents for payment of death benefits, burial allowance, moral and exemplary damages and attorney's fees<sup>[9]</sup>.

The petitioner claimed that her husband, Dario, incurred an illness on board the vessel during the term of his employment contract with the private respondents and that such illness was work-related, both medically and legally. For the petitioner, Dario's death had converted the disability benefits that he was entitled to into death benefits. Moreover, aside from death benefits and burial allowance, the petitioner likewise sought for the award of moral and exemplary damages as well as attorney's fees.

In denying their liability, the private respondents claim that the petitioner had no cause of action against them since the deceased seafarer did not suffer any disability during the period of his employment with them. Neither did Dario die during his employment with the private respondents. According to the private respondents, Dario was repatriated due to the expiration of his employment contract on August 11, 2011.

Furthermore, the private respondents asserted that Dario had forfeited his right to claim benefits as provided under the POEA Contract on the ground that he failed to comply with the mandatory post-employment medical examination requirement with the company-accredited physician within three (3) working days after his return.

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 evaluating the evidence and contentions adduced and set forth by both parties, Labor Arbiter Lilia S. Savari rendered a Decision dated June 28, 2013<sup>[10]</sup> which dismissed the case for lack of merit. Pertinent portions of the said decision are cited herein as follows:

"The deceased seafarer, Dario T. Diaz, was contracted by the Respondents for a six-(6) month contract on board the vessel, MV Herefore Express. During the term of his contract, there is no showing that Complainant has suffered the symptoms of his illness as he was able to finish his contract and upon arrival in the Philippines, he reported to Respondent's Office but failed to inform the Respondents that he was suffering from illness so that he could be referred to the company designated physician. The alleged 'Salaysay ni Dario T. Diaz' cannot be given due course as the same was not signed by him. Even the 'Clinical

Abstract' issued by Dr. Theserie B. Evangelista did not state when Complainant was admitted at Mary Johnston Hospital, Inc. of Tondo, Manila.

"It was only on December 15, 2011 that a Cardiology Report was issued by Romeo U. Meriño stating that Complainant was unfit to work, and no other medical record was presented by the Complainant that her late husband has suffered from a work-related illness during the term of his employment.

"The seafarer Dario T. Diaz died on August 8, 2012, one year after his repatriation and there is no showing that he died from an illness which he incurred during the term of his contract.

"The deceased even re-applied for re-deployment which implies that he did not report his illness to the Respondents within three (3) days upon arrival which resulted to the forfeiture of his benefits under the Standard Contract particularly Section 20 B, No. 3 which states:

'Upon sign-off from the vessel for 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 (120) days.

'For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.'

**"WHEREFORE**, a Decision is hereby rendered **DISMISSING** the case for lack of merit.

**"SO ORDERED."**

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

On November 15, 2013, the NLRC, Sixth Division, rendered the assailed Decision<sup>[11]</sup> which affirmed the decision of the Labor Arbiter, to wit:

**"WHEREFORE**, premises considered, the assailed Decision dated June 28, 2013 is **AFFIRMED**.

**"SO ORDERED."**

The NLRC adopted the findings of the Labor Arbiter. According to the NLRC, except for the undated and unsigned statement of Dario, there is no record which would account of what really happened to him. Dario never reported his difficulty in breathing to the captain while he was still on board the vessel nor to the private

respondents after his repatriation after the expiration of his employment contract. Neither did he comply with the mandatory post-employment medical examination supposed to be conducted by the company accredited physician upon his return to the Philippines. Per stance of the NLRC even if it be assumed that the cause of Dario's death could be linked to his work, it will not be fair to hold the private respondents liable because the situation was kept from them. The private respondents were not given the opportunity to avoid the resulting death on account of Dario's illness.

The NLRC likewise ruled that, under Section 20 B-3 of Memorandum Circular No. 55, a seafarer who is medically repatriated should submit himself to a post-employment medical examination within three days upon his return or to notify the agency within the same period of his physical incapacity to do so, and the failure to comply would result in the forfeiture of the right to disability benefits. Therefore, Dario's physical examination which took place months after the date of his repatriation to the Philippines did not entitle him or his heirs to claim his right to any disability benefit, even if it be assumed *arguendo* that it existed.

The petitioner filed a Motion for Reconsideration of the decision of the NLRC but the said motion was denied in a Resolution<sup>[12]</sup> dated December 27, 2013, viz:

**"WHEREFORE,** the instant motion for reconsideration is hereby DENIED for lack of merit.

**"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 DENYING PETITIONER'S CLAIM FOR DEATH BENEFITS.

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO AWARD DAMAGES AND ATTORNEY'S FEES IN FAVOR OF THE PETITIONER.

In sum, the primordial issue brought before this Court for resolution is whether or not the petitioner was entitled to death benefits under the POEA Standard Employment Contract in connection with the death of her husband, Dario.

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 Dario did not suffer from an illness during the term of his contract with the private respondents and that such illness was not work-related. The petitioner asseverates that, under Section 20 B, No. 4 of the POEA Standard Employment Contract, she