

THIRTEENTH DIVISION

[CA-G.R. SP NO. 129504, September 09, 2014]

PAROLA MARITIME AGENCY CORPORATION, SYNCRO SHIPPING, CO., LTD. - KOREA, AND/OR SHIRLEY P. ORO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND LEO ANDREU M. RONDARIO, RESPONDENTS.

DECISION

SADANG, J.:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court with prayer for issuance of a writ of preliminary injunction and/or temporary restraining order (TRO) seeking to set aside the Decision^[1] dated January 22, 2013 of the public respondent National Labor Relations Commission (Fourth Division) in NLRC NCR LAC No. OFW (M) 08-000708-12 / NLRC NCR Case No. OFW M 09-14326-11 which reversed and set aside the Decision dated June 8, 2012 of the Labor Arbiter, and the Resolution^[2] dated March 12, 2013 denying the Motion for Reconsideration.

The petition stems from the complaint filed by private respondent Leo Andreau M. Rondario (hereafter, Rondario) against Parola Maritime Agency Corporation (Parola, for brevity), an employment agency duly licensed by the Philippine Overseas Employment Administration (POEA), Syncro Shipping Co. Ltd.-Korea, a foreign corporation represented by Parola Maritime as agent, and Shirley P. Oro, in her capacity as president of Parola, and/or OS Concord, for permanent and total disability benefits, moral and exemplary damages, and attorney's fees.

Rondario, in his Position Paper^[3] averred that: He was employed by Parola in behalf of its principal, Syncro Shipping, as an ordinary seaman on board the vessel MT OS Concord for a duration of seven months under a contract which commenced on March 24, 2011. Sometime on May 12, 2011, while he was on maintenance duty at the ballast tank, his right leg slipped from the three-step stringer and he fell and injured his right hand. He was immediately given first aid treatment and the next morning he was brought to Sim Seong Hospital in Yeosu, Korea where he was operated on and confined for a few days. He was discharged from the hospital on May 17, 2011 and repatriated to the Philippines. Upon his arrival in Manila, he reported to Parola for post-employment medical examination and was referred to the Sachly International Health Partners (SHIP) supervised by Dr. Susannah Ong-Salvador. He underwent a series of examinations and was treated as an out-patient. Throughout January 2012, he consulted with Dr. Manuel C. Jacinto, Jr. who diagnosed him to be suffering from "(f)racture, xxx displaced, comminuted, distal Radius R" and assessed his disability as total and permanent.^[4] Due to his serious injuries, he is physically unfit to resume his work as a seafarer.

Rondario claimed entitlement to full permanent and total disability compensation of \$60,000.00 in accordance with the POEA Standard Employment Contract (POEA-

SEC).

In their Position Paper,^[5] Parola, Syncro Shipping and Oro (hereafter, petitioners) admitted that Rondario sustained injury on his right hand while on duty aboard OS Concord, however, they averred that: The incident happened because Rondario did not secure the safety hook of his harness, thus, "personnel deficiency" was the cause of the mishap as shown in the Undesired Incident Report^[6] and Incident Investigation Report.^[7] Upon his repatriation, Rondario was immediately referred to the company-designated physician, Dr. Ong-Salvador of SHIP. Per Medical Progress Report, dated September 5, 2012, Rondario was scheduled to start with twelve sessions of physical therapy and to consult with the ortho-surgeon and physiatrist. On September 15, 2012, Dr. Ong-Salvador reported that Rondario's injury was showing good callous formation and was thus cleared from the ortho-surgeon standpoint. Thereafter, Rondario did not attend his follow-up consultations scheduled on September 26 and October 7, 2011 as shown in the Medical Reports^[8] issued by Dr. Ong-Salvador. On October 19, 2011, Dr. Ong-Salvador, in her Reply to Medical Query, rendered a final disability grade 10 under the POEA Contract which connotes "loss of grasping power for small objects between the folds of finger of one hand."^[9] Dr. Ong-Salvador further opined that Rondario was likely to be fit to work in 4-6 months had he followed the normal course of treatment. Rondario did not continue with his treatment and petitioners were surprised by the filing of the complaint.

In his Reply,^[10] Rondario insisted on his claim, arguing that after more than 120 days of treatment, the company-designated physician confirmed that he was not fit to work but, in an effort to favor petitioners, she downgraded his injury to disability grade 10. In view of the clear bias of the company-designated physician, the assessment of his (Rondario) personal physician should prevail.

Petitioners countered in their Reply^[11] that Rondario is disqualified from claiming compensation and benefits due to his wilfull breach of safety procedures and his unjustified refusal to continue with the necessary physical therapy for his rehabilitation. They contended that the findings of Rondario's personal physician were made hastily after a single consultation and without any objective test conducted.

On June 8, 2012, Labor Arbiter (LA) Eduardo J. Carpio rendered a Decision^[12] disposing thus:

WHEREFORE, premises considered, Complainant's claim for payment of full disability benefits is dismissed for lack of merit. Respondents are hereby ordered to pay complainant disability benefits equivalent to 20% of Grade 12 pursuant to the POEA Standard Employment Contract.

All other claims are dismissed for lack of merit.

SO ORDERED.

The LA held that by discontinuing his consultation and physical therapy sessions, Rondario prevented his injury from getting healed and it would be unfair and unjust

to make the petitioners pay the full disability benefits. The LA gave more credence to the findings of the company-designated physician considering that she conducted a more extensive evaluation of the injury than Rondario's private physician.

On July 26, 2012, Rondario filed a Memorandum of Appeal^[13] challenging the LA decision.

On January 22, 2013, the NLRC (Fourth Division) issued the assailed Decision setting aside the LA decision. The *fallo* reads:

WHEREFORE, premises considered, the appeal of the complainant is hereby granted.

Accordingly, the Decision of the Labor Arbiter is hereby REVERSED and SET ASIDE and a new one ENTERED finding respondents jointly and solidarily liable to pay complainant permanent and total disability benefit in the sum of SIXTY THOUSAND US DOLLARS (US\$60,000.00) plus ten percent (10%) of the total monetary award as attorney's fees.

SO ORDERED.^[14]

Petitioners filed a Motion for Reconsideration^[15] but it was denied in the assailed Resolution dated March 12, 2013 for lack of merit;^[16] hence, this petition on the following grounds:^[17]

1. Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting private respondent total and permanent disability benefits. Public respondent failed to consider that disability is measured by gradings and only those falling under Grade 1 of the POEA Contract shall be considered as permanent and total.
 - a. Private respondent is only suffering from a partial disability which defeats and negates the very claim for full disability benefits under the POEA Contract.
 - b. Private respondent is guilty of Medical Abandonment which effectively caused the forfeiture of his right to claim disability benefits against Respondents.
 - c. Private respondent can be declared fit to work had he not voluntarily committed medical abandonment.
 - d. The proximate cause of private respondent's injury was his own willful act, that is, his failure to comply with the safety procedures of the Company.
2. Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in giving credence and weight to the

assessment of private respondent's personal physician;

- a. Private respondent's personal physician is not privy to the treatment of Private respondent's illness. His assessment was belatedly obtained on 30 January 2012 or about eight (8) months from private respondent's repatriation sometime May 2011;
 - b. The assessment of private respondent's personal physician was rendered after a single fleeting consultation, without any objective test whatsoever;
3. Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in disregarding the jurisprudence dated 2012 April 16 of *Ison vs. Crewserve Inc., et al.*, G.R. No. 173951, that is the company-designated physician who is entrusted with the task of assessing a seaman's disability;
- a. The Honorable Supreme Court holds that the finding of the company-designated physician who spent considerable time and effort in treating seafarer is entitled to great weight, credence and respect. This is also the very recent pronouncement of the Highest Court in the case of *Ruben D. Andrada vs. Agemar Manning Agency, Inc.*, G.R. No. 194758, 24 October 2012;
 - b. The Honorable Supreme Court in the recent case dated 2012 April 18 of *Santiago v. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc.*, G.R. No. 194677, upheld the finding of the company-designated physician when the employee fails to submit to a third physician as provided in the POEA Contract; and
4. Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding attorney's fees as private respondent's claim to it is bereft of factual, legal and equitable justification.

Petitioners prayed for the issuance of a TRO and/or writ of preliminary injunction to restrain private respondent from enforcing the assailed January 22, 2013 decision of the NLRC; however, the prayer for injunctive relief was denied in the Court's Resolution^[18] dated May 27, 2013.

Rondario filed a Comment^[19] to the petition on June 28, 2013 to which petitioners filed a Reply.^[20]

RULING

There is no dispute that private respondent sustained injuries while he was on duty as an ordinary seaman on board OS Concord thus entitling him to disability benefits.

Both the LA and the NLRC found that Rondario suffered from a work-related injury.

The issue is whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that Rondario's disability is total and permanent and in awarding attorney's fees.

Petitioners contend that Rondario only suffered from a partial disability which negates his claim for full disability benefits under the POEA Contract. They argue that the idea that a seafarer is totally and permanently disabled no matter his disability grading applies only where there is a CBA that provides for a permanent unfitness clause. They aver that the POEA-SEC only compensates disabilities on the basis of their gradings and not on the number of days a seafarer is under treatment or given sickness allowance.

There is no question that the POEA-SEC is deemed incorporated in every employment contract of Filipino seafarers embarking on ocean-going ships. However, the POEA-SEC is not the only guideline in resolving disability claims. In a number of cases, the Supreme Court has applied the Labor Code concept of permanent total disability to seafarers.^[21] In the leading case of *Vergara v. Hammonia Maritime Services Inc.*^[22] it was ruled that the POEA-SEC must be read in harmony with the pertinent provisions of the Labor Code on disability. An impediment should be characterized as total and permanent not only under the schedule of disabilities in Section 32 of the POEA-SEC but also under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation implementing Title II, Book IV of the Labor Code.^[23]

The Labor Code provides:

ART. 192. PERMANENT TOTAL DISABILITY

x x x 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;
(Underscoring supplied)

x x x x x x x x x

Specifically, the rules referred to in the foregoing provision are Sections 1 and 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code which state:

SECTION 1. *Condition to entitlement.* - An employee shall be entitled to an income benefit for temporary total disability if all the following conditions are satisfied:

(1) He has been duly reported to the System;