

## **SECOND DIVISION**

**[ CA-G.R. SP. No. 136201, November 21, 2014 ]**

**MAERSK FILIPINAS CREWING INC., A.P. MOLLER AS, AND/OR  
EVANGELINE SAWAD, PETITIONERS, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND LEOPOLDO A. BERNADA, JR.,  
RESPONDENTS.**

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

**GARCIA, R.R., J.:**

Before Us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision<sup>[2]</sup> dated March 31, 2014 of the National Labor Relations Commission (NLRC) which modified the Decision<sup>[3]</sup> dated January 9, 2014 of the Labor Arbiter in that petitioners were ordered to jointly and severally pay private respondent Leopoldo A. Bernada, Jr. the amount of US\$60,000.00 representing total and permanent disability benefits and 10% thereof as attorney's fees; and the Resolution<sup>[4]</sup> dated May 20, 2014 denying the motion for reconsideration thereof.

### **THE FACTS**

On October 9, 2012, private respondent Leopoldo A. Bernada, Jr. was hired as Able Seaman by petitioner Maersk Filipinas Crewing Inc. to work for its foreign principal petitioner A.P. Moller A/S on board the ocean-going vessel Anna Maersk. The contract of employment<sup>[5]</sup> stipulated that private respondent was to work for a period of six (6) months with a basic salary of US\$585.00 per month. After undergoing the required pre-employment medical examination, private respondent was deployed on board MV Anna Maersk on November 22, 2012.<sup>[6]</sup>

On January 17, 2013, the Chief Mate ordered him to open and close the iron cover of the ship's water ballast manholes. He repeatedly did this as ordered by the Chief Mate. While doing so, he heard a snap on his back and felt dizzy. Resultantly, private respondent suffered pain which he addressed by applying liniment. The pain persisted, hence, he sought medical attention by advising the Master of the vessel and was given pain relievers. Despite the pain, private respondent continued to perform his duties on board the ship. Private respondent's condition worsened until he could no longer rise up from his bed and felt severe pain in his lower back and buttocks.

On March 21, 2013, while the ship was docked at the Port of Tanjung Pelepas in Malaysia, he was referred to the Puteri Specialist Hospital where he underwent magnetic resonance imaging (MRI) of the lumbar spine. The MRI result indicated the following impression: *Features would be suggestive of broad based disc herniations*

at L4/5 and L5/s1 with spinal and neural foramen stenoses severe at L4/5. He was diagnosed to be suffering from *Prolapsed intervertebral disc lumbar spine* and was repatriated on the same day.<sup>[7]</sup>

Upon his arrival in the Philippines on March 22, 2013, private respondent reported to the office of petitioner Maersk Filipinas Crewing Inc. which referred him to the company-designated clinic. After undergoing physical examination, X-ray and MRI, he was diagnosed to be suffering from *disc herniation and disc degeneration, L4-L5 and L5-S1* and was recommended to undergo six (6) physical therapy sessions. After completing with the prescribed physical therapy, private respondent experienced decreased pain on his lower back but complained of numbness on his right extremity. He was evaluated by the company-designated orthopedic surgeon and physiatrist and was advised to undergo six (6) more sessions of physical therapy to restore range of motion and alleviate his low back pain.<sup>[8]</sup> The second set of physical therapy sessions was completed but upon evaluation by the physiatrist, private respondent was recommended to undergo a third set. Private respondent completed the third set of physical therapy on May 17, 2013. On the same day, he had a follow-up check-up with the company physiatrist who took note that low back pain and paresthesia<sup>[9]</sup> were alleviated. On even date, private respondent was discharged from the physical therapy program and was declared fit to work.<sup>[10]</sup>

On May 21, 2013, private respondent executed a document denominated as Certificate of Fitness for Work<sup>[11]</sup> which stated that private respondent was releasing the company-designated clinic Shiphealth Inc. and petitioner Maersk-Filipinas Crewing Inc. from all actions, claims and liabilities in view of the declaration that he is already fit for duty.

On June 21, 2013, or ninety-one (91) days from his repatriation, private respondent filed with the Arbitration Branch of public respondent NLRC the instant complaint<sup>[12]</sup> for disability benefits, damages and other monetary claims against petitioners Maersk Filipinas Crewing Inc., its president petitioner Evangeline Sawad and A.P. Moller A/S.

In his position paper<sup>[13]</sup> private respondent averred that after he was declared fit to work by the company-designated physician, he applied with petitioner Maersk-Filipinas for deployment and was referred to Supercare Medical Services, Inc. for pre-employment medical examination on June 10, 2013. He was made to undergo MRI which yielded the following result: *spinal canal and bilateral neural foraminal stenoses at L4-L5 & L5-S1 levels secondary to disc bulges*.<sup>[14]</sup> On the same day, private respondent and Supercare executed an *Agreement to Proceed with Further Evaluation and Management* whereby private respondent was described as 'unfit' on the basis of the MRI result. The agreement also stipulated that private respondent, being aware of the aforesaid medical finding, agrees to be further evaluated by Supercare through consultation with its medical specialist or by further medical examination. Thereafter, private respondent demanded from petitioners that he be paid disability benefits but his demands went unheeded, hence, he filed the present complaint.

Private respondent argued that because of the spinal injury, he was rendered permanently and totally disabled. As such, he is entitled to receive the amount of

US\$80,000.00 under the collective bargaining agreement (CBA)<sup>[15]</sup> between Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and Danish Shipowners' Association (DSA). Private respondent is also entitled to sickness allowance under the Philippine Overseas Employment Administration Standard Employment Contract (POEA SEC) as well as to damages and attorney's fees.

In their traverse, petitioners denied that private respondent applied for redeployment after he was declared fit to work by the company-designated physician. The first time they heard from him was when he filed the instant case for disability benefits. They averred that private respondent is not entitled to disability benefits under the POEA SEC nor under the CBA as he was already declared fit to work by the company-designated doctor on May 21, 2013, or sixty (60) days from his initial consultation with the company-designated physician. In fact, private respondent even executed a Certificate of Fitness attesting to his wellness. At the time the complaint was filed, private respondent has no cause of action against petitioners as there was no evidence of his disability. Private respondent is likewise not entitled to sickness allowance and damages. Petitioners shouldered all his medical expenses and paid his sickness allowance. They also acted with prudence and diligence in attending to private respondent's concerns by referring him to the company-designated physician.

During the pendency of the proceedings with the Labor Arbiter, or on July 25, 2013, private respondent consulted with Dr. Cesar H. Garcia, a specialist in orthopedic surgery and bone and joint diseases. On even date, Dr. Garcia issued a certification to the effect that private respondent was unfit to work as a seaman in whatever capacity.<sup>[16]</sup>

In a Decision<sup>[17]</sup> dated January 9, 2014, the Labor Arbiter ruled in favor of private respondent and ordered petitioners to jointly and severally pay him US\$80,000.00 as total and permanent disability benefits pursuant to the parties' CBA, US\$1,700.00 as sickness benefits and 10% of the total award as attorney's fees. It was ratiocinated that since private respondent's injury was work-related, he may claim disability benefits under the POEA SEC, as amended by the parties' CBA. Private respondent was found to be permanently and totally disabled since he could no longer be called upon to lift heavy objects which is part and parcel of his customary duties as a seaman. More weight was accorded to the findings of private respondent's own doctor declaring him unfit for sea duty. The declaration of fitness made by the company-designated physician was disregarded for being self-serving and biased. The same was also contradicted by the findings of Super Care Medical Services Inc. and the MRI results undertaken during the pre-employment medical examination. The claim for sickness allowance was granted since petitioners failed to present payment of the same. The pertinent portions of the Labor Arbiter's decision are quoted:

xxx As the Complainant's injury is work related this in turn allows him to claim disability benefits under the Standard POEA Employment Contract as Amended by the AMOSUP CBA.

xxx this Office notices the incongruity between the evidences that form[s] part of the records of this case. While the findings of the respondents' physician concluded Complainant to be fit for work xxx, this matter is contradicted by the Respondents['] own accredited medical services provider Super Care Medical Services Inc. that xxx found him to be Unfit for Work after Complainant underwent MRI Examination xxx.

There is also an insinuation/admission present that was raised by the Respondents in their Reply/Motion to Expunge[d] Complainant's argument that he should [be] declared as permanently disabled because he was not re-deployed by the Respondents, it becomes palpable that Respondents declared the Complainant to be fit for work and made him sign/agree to the certificate of fitness in exchange for a promise of re-deployment. xxx

This allows us to disregard the Fit for Work diagnosis made by the company physician xxx for we are aware that the findings of the company-designated physician is self-serving and should be taken with a grain of salt as it is an undeniable fact that the physician as a company designated doctor renders an opinion which is palpably self serving and biased in favor of the company which is his employer.

xxx

The Complainant's physician of choice had stated that the Complainant is Unfit to Work as a seaman because of his current conditions of Spasm paratevertebral muscles with listing, tightness hamstrings and SLRT. Using the Department of Health (DOH) administrative Order No. 176, Series of 2000 we can conclude that the Complainant can no longer perform his customary job as a seaman for his duties as such require[s] him to be in excellent physical condition unhindered by any impairment that would prevent normal movement and physical activities.

Accordingly, xxx this Office holds the Complainant is permanently and totally disabled. He could no longer be called upon to lift heavy objects which is part and parcel of his ordinary duties as a seaman xxx This being the case, this office finds the Complainant is ENTITLED to the payment of Permanent Disability Benefits amounting to a Grade 1 of the Standard POEA Employment Contract as Amended by the AMOSUP CBA of US\$80,000.00 or its Philippine Pesos equivalent at the time of payment.

xxx

We now arrive at the Complainant's demands for the payment of his sickness benefits/allowance that is equivalent to US\$1,700.00. xxx

The failure to find any explanation or proof of payment coming from the

Respondents leads us to conclude that the Complainant, while he may have been extended medical attention was nevertheless not paid his sickness allowance. This being the case Respondent is thus ORDERED to pay the Complainant his sickness allowance xxx

WHEREFORE, Premises Considered, this office finds the Complainant to be Totally and Permanently Disabled. Respondents, jointly and severally are held liable to pay the Complainant the amount of US\$80,000.00 or its Philippine Peso Equivalent at the time of payment as total and permanent disability benefit[, ] US\$1,170.00 as sickness benefits as well as to pay Attorney[']s fees equivalent to ten percent (10%) of the total award.

Complainant's other claims are denied for lack of merit.

SO ORDERED.<sup>[18]</sup>

Aggrieved, petitioners filed an appeal with public respondent NLRC which in the assailed Decision<sup>[19]</sup> dated March 31, 2014 affirmed with modification the decision of the Labor Arbiter. Private respondent was held to be entitled to total and permanent disability benefits of US\$60,000.00 under the POEA SEC. He is not entitled to claim under the CBA since he was not an officer of the ship. Neither did his injury result from an accident. The award of sickness allowance was deleted since petitioners submitted evidence showing payment thereof. The award of attorney's fees was affirmed. The dispositive portion of the assailed decision is quoted:

WHEREFORE, the Decision dated 09 January 2014 is hereby MODIFIED. Respondent are, jointly and severally, ordered to pay complainant total and permanent disability benefits in the amount of US\$60,000.00 or its Philippine Peso equivalent at the time of payment and ten percent (10%) thereof as attorney's fees.

The award of sickness benefits is deleted.

The other findings are affirmed.

SO ORDERED.<sup>[20]</sup>

Aggrieved, petitioners filed the instant petition for certiorari raising the following grounds for its allowance:<sup>[21]</sup> to wit:

THE HONORABLE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION DUE TO THE FOLLOWING:

1. IN ALLOWING THE CLAIM TO PROSPER NOTWITHSTANDING