

SPECIAL FIFTEENTH DIVISION

[CA-G.R. SP NO. 127057, November 19, 2014]

**CAREER PHILIPPINES SHIPMANAGEMENT INCORPORATED,
AND/OR COLUMBIA SHIPMANAGEMENT LTD. AND VERLOU
CARMELINO, PETITIONERS, VS. NATIONAL LABOR RELATIONS
COMMISSION (SECOND DIVISION) AND PAULINO M. ALDABA,
RESPONDENTS.**

D E C I S I O N

VILLON, J.:

This Petition for Certiorari under *Rule 65* of the *1997 Rules of Civil Procedure*, as amended, assails on ground of grave abuse of discretion, the Decision dated July 16, 2012^[1] rendered by the National Labor Relations Commission (NLRC)-2nd Division in LAC NO. 05-000486-12 which reversed the Decision dated April 27, 2012^[2] of Labor Arbiter Pablo A. Gajardo, Jr. Likewise assailed is the Resolution dated August 31, 2012^[3] which denied petitioners' Motion for Reconsideration.

The facts of the case, as culled from the records are as follows:

Petitioners Career Philippines Shipmanagment Incorporated, and Verlou Carmelino, in behalf of their foreign principal, petitioner Columbia Shipmanagement Ltd. hired private respondent Paulino M. Aldaba (or "private respondent") as *Bosun* for work on board the vessel *M/V Cape Frio* with a basic monthly salary of US\$564.00.^[4]

On April 4, 2011, in the course of the performance of his duties, private respondent was accidentally hit by twisted chains made of heavy metal causing him to fall which resulted to "back injury".^[5]

On April 7, 2011, when the vessel reached the Port of Hongkong, private respondent was examined at the Quality Health Care Medical Center, by Dr. Thomas Wong. The examination showed a fracture on private respondent's back, for which he was declared unfit to work. He was immediately repatriated.^[6]

Upon arrival in Manila on April 11, 2011, petitioners referred private respondent to the company-designated physician at NGC Medical Specialist Inc. for treatment and rehabilitation. The x-ray examination on his back showed a "misalignment of distal sacrum that may suggest fracture".^[7] Likewise, the x-ray examination on his thoracic spine revealed an "anterior wedging deformity, T11 Osteopenia and early degenerative osseus changes".^[8]

After the continuing evaluation and medical treatment for 163 days, the company-designated physician issued a Medical Report dated September 29, 2011, to wit:

- "1. The patient has reached maximum medical cure.
2. The final disability grading under the POEA schedule of disabilities is Grade 8- moderate rigidity or two thirds (2/3) loss of Thereafter, motion or lifting power of the trunk." [9]

Thereafter, private respondent consulted Dr. Misael Jonathan A. Ticman, an Orthopedic Surgeon and Diplomate, Philippine Board of Orthopedics, for an independent assessment of his medical condition. Dr. Ticman's findings showed that private respondent's injury resulted to his total permanent disability making him unfit to work as a seafarer in any capacity.[10]

Private respondent then demanded for total permanent disability compensation. Petitioners did not heed his demand. However, they expressed their willingness to compensate private respondent the amount corresponding to Grade 8 disability rating based on the medical findings of the company-designated physician.

Hence, private respondent filed a complaint for payment of total and permanent disability benefits, as well as expenses medical expenses with prayer for damages and attorney's fees against petitioners with the Arbitration Board of the NLRC, docketed as NLRC-NCR-OFW (M)- 12-19022-11.[11]

On April 27, 2012, Labor Arbiter Pablo A. Gajardo, Jr. rendered a Decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to jointly and severally pay complainant Paulino M. Aldaba disability benefits in the amount of US\$16,795.00 which is equivalent to a Grade 8 disability under the POEA Contract, or its peso equivalent at the time of payment.

All other claims are dismissed for lack of merit.

SO ORDERED."

Petitioners appealed to the NLRC. On July 16, 2012, the 2nd Division thereof, rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, the Decision dated April 27, 2012 of Labor Arbiter Pablo A. Gajardo is hereby reversed. Respondents, jointly and severally, are hereby ordered to pay Complainant-Appellant by way of permanent and total disability compensation the amount of US\$60,000.00, pursuant to the POEA Standard Contract and to pay attorney's fees of 10% of the total award.

SO ORDERED."

Petitioners' Motion for Reconsideration of the assailed Decision was denied in the NLRC Resolution dated August 31, 2012, to wit:

"WHEREFORE, in view of the foregoing premises, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

No further Motion of similar nature shall be entertained.

SO ORDERED."

Hence, the present petition for certiorari, petitioners raising the following issues:^[12]

I. THE HONORABLE 2nd DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN CONSIDERING THE COMPLAINANT-APPELLANT TOTALLY AND PERMANENTLY DISABLED BY THE MERE LAPSE OF 120 DAYS. IN THE RECENT CASE, ALAN H. SANTIAGO V. PACBASIN SHIPMANAGEMENT INC. (G.R. NO. 194677, APRIL 18, 2012), THE HONORABLE SUPREME COURT RULED THAT THE PRIVATE RESPONDENT CANNOT BE CONSIDERED TOTALLY AND PERMANENTLY DISABLED AS A PROPER PARTIAL DISABILITY GRADING WAS ASSESSED WITHIN THE 240 PERIOD.

II. THE HONORABLE 2nd DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN DISREGARDING SECTION 20-B (6) OF THE POEA CONTRACT WHICH PRESCRIBES THAT ANY DISABILITY WHETHER TOTAL OR PARTIAL SHALL BE COMPENSATED IN ACCORDANCE WITH THE SCHEDULE OF DISABILITY BENEFITS IN SECTION 32 OF THE POEA CONTRACT.

III. THE HONORABLE LABOR ARBITER CORRECTLY FOUND THAT DISABILITY BENEFITS IF ANY SHOULD NOT EXCEED THE GRADE 8 DISABILITY ASSESSMENT AS DETERMINED BY THE COMPANY DOCTOR IN ACCORDANCE WITH THE POEA CONTRACT AND RECENT JURISPRUDENCE.

IV. THE PRIVATE RESPONDENT'S PERSONAL PHYSICIAN DID NOT DECLARE ANY DISABILITY ASSESSMENT. SERIOUS ERROR WAS COMMITTED BY THE 2ND DIVISION WHEN IT STATED THAT PRIVATE PHYSICIAN DETERMINED A GRADE 1 DISABILITY ASSESSMENT.

V. THE HONORABLE 2nd DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN UPHOLDING THE SINGLE CONSULTATION MEDICAL REPORT OF SEAFARER'S PRIVATE PHYSICIAN OVER THE COMPLETE SET OF MEDICAL REPORTS OF

THE COMPANY DESIGNATED PHYSICIAN SHOWING MONITORING AND TREATMENT FROM 12 APRIL 2011 UNTIL 29 SEPTEMBER 2011.

VI. THE HONORABLE 2nd DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN ADOPTING THE BARE AND BASELESS ALLEGATION OF FACTS AS STATED BY THE PRIVATE RESPONDENT DESPITE EVIDENCE PRESENTED TO THE CONTRARY.

VII. IN FACT, THE PRIVATE RESPONDENT IS IN THE FIRST INSTANCE IS NOT ENTITLED TO ANY DISABILITY BENEFITS AS HIS ALLEGED INJURY/DISABILITY WAS CAUSED BY:

A. HIS OWN WILLFUL ACT OR INTENTIONAL BREACH OF DUTY; AND

B. SAID INJURY/DISABILITY IS DIRECTLY ATTRIBUTABLE TO SAID WILLFUL ACT OR INTENTIONAL BREACH OF DUTY.

VIII. GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE HONORABLE LABOR COMMISSION IN AWARDING ATTORNEY'S FEES EQUAL TO TEN PERCENT (10%) OF THE MONETARY AWARD.

PETITIONER (SIC) IS NOT ENTITLED TO ATTORNEY'S FEES THERE BEING NO BAD FAITH ON THE PART OF PETITIONERS IN DENYING THE FORMER'S EXORBITANT CLAIM FOR TOTAL AND PERMANENT DISABILITY BENEFITS.

The petition is meritorious.

Undisputedly, private respondent's injury is work-related and he is, therefore, entitled to disability benefits. The issue now in this petition hinges on the classification of such injury in order to determine the appropriate disability benefits due him.

The Labor Arbiter sustained petitioner's entitlement to disability benefits in the amount corresponding to Grade 8 disability rating, as assessed by the company-designated physician. However, on appeal, the NLRC ruled that the recommendation of private respondent's doctor-of-choice was tenable and awarded him total and permanent disability benefits corresponding to Grade 1 disability rating.

Petitioners now argued that private respondent's medical condition does not merit a Grade 1 disability rating as to entitle him to total permanent disability benefits considering that the company-designated physician already made a Grade 8 disability rating well within the 240-day period.

We agree with the petitioners.