

## SIXTEENTH DIVISION

[ CA-G.R. SP NO. 128246, November 17, 2014 ]

**LORNA PADERNAL, IN BEHALF OF HER HUSBAND, RICHARD PADERNAL, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, INTERORIENT MARITIME ENT., INC. AND/OR JASMIN P. ARBOLEDA AND/OR INTERORIENT MARITIME ENT., INC., LIBERIA, RESPONDENTS.**

### *DECISION*

**BATO, JR., J.:**

Assailed in this Petition for Certiorari under Rule 65 of the 1997 Revised Rules on Civil Procedure is the Decision<sup>[1]</sup> dated 31 July 2012 and the Resolution<sup>[2]</sup> dated 22 October 2012 of the National Labor Relations Commission in NLRC LAC No. 05-00484-12 [NLRC OFW Case No. (M) 07-11392-11].

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

Respondent Interorient Maritime Enterprises, Inc. ("Interorient-Philippines") is a domestic corporation engaged in the business of recruitment and placement of seafarers for and on behalf of its foreign principal Interorient Maritime Enterprises, Inc. - Liberia ("Interorient-Liberia"). Jasmin P. Arboleda ("Arboleda") is the President of Interorient-Philippines<sup>[3]</sup> (Interorient-Philippines, Interorient-Liberia and Arboleda shall be hereafter collectively referred to as "respondents").

On 13 September 2010, Richard Padernal ("Padernal") was contracted by Interorient-Philippines as Third Engineer of Interorient-Liberia's vessel "Navis Mini I".<sup>[4]</sup> Padernal's contract with Interorient-Liberia was for a period of nine (9) months with additional three (3) months upon their mutual consent. His basic monthly salary was US\$800.00 with a fixed overtime pay of US\$320.00 per month and supplementary wages of US\$1,813.00.<sup>[5]</sup>

Sometime in March 2011, while the vessel was in Spain and in April 2011 while in Italy, Padernal was medically examined due to stomach pains and was found to be suffering from Gastroenteritis.<sup>[6]</sup> Thereafter, he was medically repatriated on 12 April 2011.<sup>[7]</sup>

Upon his arrival in the Philippines on 12 April 2011, Interorient-Philippines referred Padernal to Sachly International Health Partners Diagnostic and Medical Clinic ("Sachly Clinic"). However, since it was a Holy Week, Sachly Clinic could not conduct a full medical examination on Padernal.<sup>[8]</sup> As such, Padernal's wife Lorna opted to bring him to Medical City for said medical examination.<sup>[9]</sup> In particular, on 13 April 2011, Padernal underwent an X-ray of his abdomen which showed a "suspicious left upper abdominal density".<sup>[10]</sup> Also, on 18 April 2011, a computed

tomography scan (CT scan) was conducted on his whole abdomen. The CT scan had the following findings –

"Oral and triphasic intravenous contrast enhanced axial CT images of the whole abdomen reveal the following:

A large, well-defined, heterogeneously enhancing mass with multiple central hypodense areas is noted anterior to the stomach, which cannot be separated from the said organ. It measures 21.8 x 15.9 x 18.9 cm (L x W x AP), compressing the gastric cavity and the distal body and tail of the pancreas. No vascular involvement evident.

x x x      x x x      x x x

Impression:

Large heterogenous mass, maybe gastric or mesenteric in origin. A neoplastic process is not ruled out. Considerations include GIST (gastrointestinal stromal tumor) and leiomyosarcoma. Tissue correlation is recommended.

Grade I prostatomegaly.

Thoracolumbar spondylosis."<sup>[11]</sup>

To confirm the findings of the CT Scan, a pathological test was done on the mass found in Padernal's abdomen on 30 April 2011. Said test showed that the gastric mass was a Neurogenic Type of Gastrointestinal Stromal Tumor (GIST).<sup>[12]</sup>

In the interim, on 9 May 2011, Dr. Susannah Ong-Salvador ("company-designated physician") of Sachly Clinic issued a Medical Progress Report declaring Padernal's GIST as not work-related. She explained as follows –

"This is a follow-up medical report of Mr. Richard T. Padernal a 52 y/o 3rd engineer with a working impression of Gastrointestinal Stromal Tumor (GIST).

Mr. Padernal was seen at SHIP Clinic today and still complains of bloatedness, occasional peri-umbilical pain relieved by flatus associated with abdominal distention. There were no other signs and symptoms such as dizziness, vomiting, constipation, fever and hematochezia. Vital signs were normal.

Patient was seen and examined by our General surgeon and noted that patient had a gastrointestinal stromal tumor. Immediate gastric surgery which is total gastrectomy and esophagojejunal anastomosis operation (gastric bypass) is warranted. Afterwhich, depending on the degree of the illness if there is a malignant process on-going then there might be a need for a chemotherapy post surgery.

The estimated cost of the contemplated major surgery (total gastrectomy and esophagojejunal anastomosis (gastric bypass) inclusive of professional fees and hospital bills is Php900,000, barring complications.

Please take note that above procedure/operation are vital in the medical management of the patient's illness, thus further delays may cause unnecessary complications that might prohibit the fast recovery of our patient.

A gastrointestinal stromal tumor (GIST) is one of the most common mesenchymal tumors of the gastrointestinal tract (1-3% of all gastrointestinal malignancies). Gastrointestinal stromal tumors originate from stem cells (sic), established in the gastrointestinal zone where essential gastrointestinal function occurs. Most (50-80%) GISTs arise because of a mutation in a gene called c-kit thus considered non-work related.

Prognosis is guarded since patient is compelled to undergo surgery.

Estimated length of further treatment is 4-8 months barring unforeseen complications."<sup>[13]</sup>

Thereafter, Padernal was confined at Jose Reyes Memorial Medical Center from 16 May 2011 until 30 May 2011. During his confinement, he underwent the following procedures: (1) exploratory laparotomy; (2) tube jejunostomy; (3) Jackson-Pratt (JP) drain; and (4) esophagogastroduodenoscopy. However, his hepatic tumor was not removed as it was unresectable.<sup>[14]</sup> As such, the company-designated physician recommended that Padernal should first undergo Adjuvant Chemotherapy of oral anti-neoplastic for three months prior to exploratory laparotomy in order to control the growth of the cancer cells.<sup>[15]</sup>

On 26 July 2011, Padernal underwent exploratory laparotomy with partial gastrectomy at Vicente Sotto Memorial Medical Center.<sup>[16]</sup> On the same day, as represented by Lorna, Padernal filed a Complaint against respondents for payment of total and permanent disability benefits, reimbursement of medical, hospital and doctor's expenses, sickness allowance, moral and exemplary damages and attorney's fees equivalent to 10% of the total claim with legal interest until the time of payment.<sup>[17]</sup>

In his Position Paper, Padernal argued that he is entitled to total and permanent disability benefits because his GIST has rendered him totally and permanently unfit to work as a seafarer. He maintained that, under the Philippine Overseas Employment Administration-Standard Employment Contract ("POEA-SEC"), a permanent total disability simply means the disablement of an employee to earn wages in the same kind of work he was trained to perform or any kind of work which a person of his mentality and attainment could do. Padernal added that his duties require manual labor on board the vessel and has contributed and aggravated the development of his illness. He emphasized that respondents failed to dispute the presumption provided in Section 20-B (4) because the company-designated

physician failed to declare that he is suffering from a non-work related illness. Thus, he is entitled to the maximum disability benefit of US\$60,000.00.<sup>[18]</sup>

Anent Padernal's claim for sickness allowance and reimbursement of medical expenses, he maintained that, under Section 20-B (3) of the POEA-SEC, he is entitled to a total sickness allowance for four months or equivalent to US\$3,200.00 because he has not received any amount from respondents from the time he was medically repatriated. Also, Section 20-B (2) provides that the employer shall be liable for the full cost of such medical, serious dental and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. Padernal asserted that respondents did not reimburse him of the medical expenses he incurred at Medical City, Jose Reyes Memorial Medical Center and Vicente Sotto Memorial Medical Center which had an accumulated amount of Php230,495.56.<sup>[19]</sup> Thus, he argued that he is also entitled to moral and exemplary damages and attorney's fees because respondents deliberately and wantonly refused to pay their contractual obligations to him.

Respondents countered that Padernal's GIST is not compensable under the POEA-SEC because it is not work-related. They argued that Section 20-B of the POEA-SEC requires a seafarer's illness to be work-related to consider the same as compensable. Moreover, Padernal's GIST is not listed as an occupational disease under Section 32-A of the same contract. Consequently, Padernal has the burden of proving that his GIST was caused by his working conditions on board MV Navis Mini I. Nevertheless, Padernal's work did not involve risks that could have contributed to the development of his GIST. The company-designated physician even declared that his GIST is not work-related because it was not initiated by environmental factors such as stress, but was caused by genetic mutation. Respondents added that they expressed their willingness to shoulder the cost of Padernal's Adjuvant Chemotherapy with anti-neoplastic treatment and gastrectomy. However, it was Padernal who defied the orders of the company-designated physician to first undergo said chemotherapy in order to decrease the size of the tumor and, instead, he immediately arranged for a gastrectomy at Jose Reyes Memorial Medical Center without notifying them. Respondents posited that Padernal's defiance is a clear violation of Section 20-D of the POEA-SEC<sup>[20]</sup> which mandates that a seafarer's willful breach of his duties to abide by the orders of the company-designated physician's recommended treatment bars any claim for compensation and benefits. Thus, Padernal is not entitled to his claims for permanent and total disability benefits, sickness allowance, damages and attorney's fees.<sup>[21]</sup>

On 17 April 2012, the Labor Arbiter rendered a Decision granting Padernal's claims, the dispositive portion of which reads –

"WHEREFORE, premises considered, judgment is hereby rendered in favor of complainant Richard Padernal whose claims through his wife Lorna Padernal is meritorious.

Respondents Interorient Maritime Enterprises, Inc. and/or Interorient Maritime Enterprises, Inc.-Liberia and/or Jasmin P. Arboleda who is the President of respondent local agency are jointly and solidarily liable to

pay complainant the following:

1. Disability Benefits of US \$ 60,000.00; (or in its Philippine currency based on the prevailing rate at the time of payment)
2. Medical expense allowance of US\$3,200;
3. Reimbursement of hospital expense in the sum of P230,495.56
4. Attorney's fees of 10% of the total monetary award.

SO ORDERED."<sup>[22]</sup>

The Labor Arbiter ratiocinated that the compensability of an ailment does not depend on whether the disease was pre-existing at the time of employment but rather if the disease is work-related or has aggravated his condition. The Labor Arbiter ruled that, considering the nature of Padernal's illness, it is safe to presume that his employment had contributed to its aggravation if indeed it was pre-existing at the time of his employment. The Labor Arbiter added that it is not necessary that the employee be in perfect condition or free from any disease at the time he had the illness for him to be duly compensated for it. While an employer is not an insurer of the health of his employees, he takes them as he finds them and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal healthy person. Furthermore, Padernal was unable to perform his customary work for more than 120 days or even 240 days from his illness, thus, the Labor Arbiter declared that his disability already constitute total permanent disability and an award of total and permanent disability benefit would be germane to the purpose of the benefit, *i.e.*, to help the employee in making ends meet at the time when he was unable to work.

On appeal<sup>[23]</sup> by the respondents, the NLRC reversed the Labor Arbiter's Decision in its Decision dated 31 July 2012, the *fallo* of which reads –

"WHEREFORE, the present appeal is hereby GRANTED and the challenged Decision dated April 17, 2012 is REVERSED and SET ASIDE.

Accordingly, the complaint for total and permanent disability benefits is DISMISSED for lack of merit.

SO ORDERED."<sup>[24]</sup>

The NLRC ruled that Padernal's GIST is not included or classified as work-related and compensable under the POEA-SEC. In fact the company-designated physician described it as a tumor that originated from stem cells established in the gastrointestinal zone and arise due to a mutation in a gene called c-kit, thus considered non-work related. While there is a disputable presumption that a seafarer's illness is work-related, the NLRC found that the respondents were able to substantially establish that Padernal's illness was caused by genetic mutation and not caused by the nature of his work while employed by respondents. Also,