

## THIRD DIVISION

[ CA-G.R. SP NO. 134106, November 12, 2014 ]

**ADONIS B. FRANCISCO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), MARLOW NAVIGATION PHILS., INC., MARLOW NAVIGATION CO. LTD., AND/OR MR. ANTONIO GALVEZ, JR., RESPONDENTS.**

### DECISION

**DE GUIA-SALVADOR, R., J.:**

Assailed in this Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure are two issuances of the public respondent National Labor Relations Commission ("**NLRC**") in NLRC LAC No. (M) 05-000511-13, viz: (a) the Decision<sup>[1]</sup> dated September 18, 2013, which affirmed with modification the Decision<sup>[2]</sup> dated March 25, 2013 of the Labor Arbiter, denying the the Complaint<sup>[3]</sup> for permanent disability benefit, but ordering the payment of benefit equivalent to a Grade 9 disability rating and of sickness allowance; and, (b) the Resolution<sup>[4]</sup> dated December 16, 2013 which denied petitioner's motion for reconsideration of the September 18, 2013 Decision.

#### *The Facts*

Petitioner Adonis B. Francisco ("**Francisco**") had been an employee of private respondent Marlow Navigation Co. Ltd., represented by its local manning agency, Marlow Navigation Phils., Inc. ("**Marlow**"). Private respondent Antonio Galvez, Jr. ("**Galvez**") is an officer of Marlow.<sup>[5]</sup>

Francisco was last hired by Marlow as a Wiper on-board the ship "MV Rosaire Desgagnes" for a period of eight (8) months.<sup>[6]</sup> As such, he was tasked to maintain the cleanliness of engine rooms, machinery and equipment, to assist the 3<sup>rd</sup> Engineer in sounding off tanks during Bunker operation, and to assist during delivery of provision.<sup>[7]</sup> Aside from the 2010 Philippine Overseas Employment Administration Standard Employment Contract ("**2010 POEA SEC**"), Francisco's employment is allegedly covered by a Collective Bargaining Agreement (IBF-AMOSUP/IMEC TCCC **CBA**).<sup>[8]</sup>

On December 11, 2011, Francisco boarded the ship to begin working as a Wiper. On January 26, 2012, while the ship was at a port in Antwerp, Belgium, he injured his left hand.<sup>[9]</sup> The details of the accident were stated in the Accident Report<sup>[10]</sup> and on Marlow's Logbook Entry, viz:<sup>[11]</sup>

"Wiper Adonis and Chief Cook Lara went ashore as ordered to refill some empty water bottles for the vessel on agents office. Water bottle is approximately 5 gallons each. While wiper is refilling the bottles with his hand, the bottle explodes from the pressure exerted by the hose, found out that the bottle cannot withstand the pressure and injured his left hand."<sup>[12]</sup>

Francisco was immediately brought to a clinic for examination and x-ray. The attending doctor recorded that because Francisco suffered a contusion and fracture, he had to undergo a pinning operation.<sup>[13]</sup> On January 29, 2012, Francisco was repatriated for medical reasons. He reported to Marlow's office for his post-employment medical examination and was referred to the company-designated physician at the Manila Doctors Hospital. On January 30, 2012, an x-ray<sup>[14]</sup> was conducted on his left hand. Based on the Initial Medical Report prepared by the company doctor, Dr. Joy Ellen Buena-Barrameda ("**Dr. Barrameda**"), Francisco was diagnosed to have suffered "Fracture, Proximal Carpal, Index Finger, Left Hand S/P Pinning (28 January 2012)."<sup>[15]</sup>

On February 6, 2012, Francisco was referred to Dr. Jose Bautista ("**Dr. Bautista**"), an orthopedic surgeon, who pronounced that the x-ray showed good reduction.<sup>[16]</sup> On February 20, 2012, Francisco consulted Dr. Bautista again, during which the cast and pins on his left hand were removed. Francisco was then referred to Dr. Arnel Malaya ("**Dr. Malaya**"), a physiatrist, who recommended that he undergo rehabilitation.<sup>[17]</sup> On March 6, 2012, after another check-up, Dr. Bautista found a re-displacement of Francisco's fracture despite a month of immobilization. Since the alignment was unacceptable (the finger is malrotated), open reduction and internal fixation surgery was recommended. Dr. Malaya then advised the discontinuance of rehabilitation.<sup>[18]</sup>

Due to the finding of misalignment of the bones of his finger, on March 15, 2012, Francisco underwent an operation described as Correlative Osteotomy, Bone Grafting, Proximal Phalanx, (L) Index Finger under the care of Dr. Bautista.<sup>[19]</sup> The medical report indicated that Francisco tolerated the procedure very well.<sup>[20]</sup> On March 23, 2012, upon follow-up, Dr. Bautista noted that it has been eight (8) days since the surgery and the wounds appeared to be dry. The x-rays showed that the alignment of the bones was maintained and the pins were intact.<sup>[21]</sup> On March 29, 2012, Dr. Bautista removed the sutures and noted that the x-rays showed fracture alignment and intact pins.<sup>[22]</sup> Dr. Bautista finally removed the pins from the left hand on April 12, 2012. Francisco was advised to do warm soaks thrice a day and to perform a range of motion exercises. Follow-up x-ray was accordingly recommended.<sup>[23]</sup>

On April 16, 2012, Marlow issued a certification<sup>[24]</sup> signed by Kristine Saguiero (P&I Supervisor) verifying the sickness allowance given to Francisco in the amount of USD 928.80 for the period of January 30, 2012-March 23, 2012. The certification also noted that the employer still had pending allowance to grant Francisco.

On May 2, 2012, after a brief narration of Francisco's accident and the

circumstances that occurred during treatment, Dr. Barrameda issued a disability assessment, as follows:

"If a disability is to be assessed now, based on the POEA contract, the closest possible disability grade would be HANDS grade 09, Loss of opposition between the thumb and tips of the fingers of one hand, #6. (Emphasis supplied)"<sup>[25]</sup>

Dissatisfied with Dr. Barrameda's disability assessment, on July 13, 2012, Francisco consulted with a doctor of his choice, Dr. Rogelio Catapang ("**Dr. Catapang**"), of Orthopedic Surgery and Traumatology; Flight Surgeon. Dr. Catapang took note of the results of Francisco's x-ray back in January 30, 2012, provided a brief summary of his condition, and came up with the following findings and conclusion:

"Physical examination revealed a well-developed, well-nourished ambulatory patient, focused on the left index finger. Presence of the scar was noted on the dorsal index finger. There is pain of finger flexion of the index finger and observed rotated internally. There is radiating pain to the dorsal wrist. Patient is right-handed and noted his grip on his left hand is slightly weak; with pain noted with stress and load.

xxx

**Mr. Francisco** continues to have left hand pain. Range of motion is restricted particularly in flexion; because his grip is weak, he is unable to lift heavy objects, the kind of work seaman [sic] are expected to perform. He has lost his pre-injury capacity and is UNFIT to work back at his previous occupation.

xxx

**Mr. Francisco** is a right handed seaman who sustained a disabling injury in his left hand. With his present condition, he will not be able to perform his pre injury work, because of the physical demands it entails. He is unfit to resume his duties." (Emphasis supplied)<sup>[26]</sup>

On July 24, 2012, Francisco filed a complaint for payment of total disability benefits in the amount of US\$89,100.00; sickness allowance equivalent to the still unpaid period; reimbursement of medical expenses amounting to PhP9,300.00; moral and exemplary damages; and attorney's fees.<sup>[27]</sup> He asserted that his last medical evaluation was done on July 13, 2012, the day his personal doctor examined him. He further claimed that he was under medical care for approximately 164 days, but during that time no disability grading had been issued by the company-designated physician. He insisted that due to his injury, he was not able to perform his customary job for more than 120 days, entitling him to permanent total disability benefits.<sup>[28]</sup>

On the other hand, Marlow countered that Francisco received extensive medical care and treatment starting January 30, 2012 under the supervision of the company-designated physician, Dr. Barrameda, along with Dr. Bautista, an orthopedic surgeon and Dr. Malaya, a physiatrist. On May 2, 2012, Dr. Barrameda assessed Francisco with a disability grading of 9 based on the POEA Schedule of Disability Gradings;

thus, he is only entitled to the equivalent amount of Grade 9 because that was the official assessment made by the company-designated physician.

Marlow maintained that the CBA is not applicable as there are questions as to its coverage and effectivity. It further argued that the disability grading should be assessed based on the POEA-SEC and not by the number of days that a seafarer is under treatment. It pointed out that the 120-day rule was abandoned when the Supreme Court held that it is only upon the expiration of 240 days and the company-designated physician failed to issue a disability grading that a seafarer can be deemed as possessing a permanent total disability. It also refuted the claim for damages and attorney's fees for lack of evidence to prove that it acted in bad faith.

[29]

### ***The Decision of the Labor Arbiter***

In the Decision dated March 25, 2013, the Labor Arbiter dismissed the complaint for lack of merit, but ordered Marlow to pay Francisco sickness allowance and benefits equivalent to disability rating of grade 9. The dispositive portion of the Decision states:

**"IN THE LIGHT OF THE FOREGOING,** judgment is hereby rendered as follows:

1. Complainant's claim for permanent disability benefit is hereby denied for lack of merit.
2. Respondent Marlow Navigation Inc. is ordered to pay complainant the following: a. his disability grading 9 based on the assessment by the company-designated physician or the sum of US\$13,060.00 or its peso equivalent; and b. complainant's sickness allowance amounting to US \$1,358.80, or its peso equivalent during the time of payment.

All other claims are dismissed for lack of merit or basis."<sup>[30]</sup>

Dissatisfied, Francisco filed an appeal with the NLRC.<sup>[31]</sup>

### ***The Decision of the NLRC***

In the Decision dated September 18, 2013, the NLRC affirmed the ruling of the Labor Arbiter with modification holding Galvez, a Marlow official, solidarily liable with the said company. The dispositive portion of the Decision states:

**"WHEREFORE,** premises considered, the assailed Decision is **AFFIRMED** with **MODIFICATION**, in that respondent Antonio Galvez, Jr. is held jointly and jointly [sic] and solidarily liable with respondents Marlow Navigation Philippines, Inc. (manning agency) and Marlow Navigation Co., Ltd. (principal) for complainant's disability benefit and sickness allowance."<sup>[32]</sup>

Francisco filed a motion for reconsideration but the NLRC denied it for lack of merit.

[33] Hence, this petition for *certiorari*. [34]

### ***The Issues***

In seeking to nullify and set aside the assailed issuances, petitioner Francisco raised the following issues against public respondent NLRC when:

"A. It incorrectly failed to consider the fact that petitioner is suffering from permanent total disability (and not a partial disability at a Grade 9 rating);

B. It inaccurately relied solely on the schedule of disability or impediment as stated in the POEA SEC;

C. It erroneously gave credence to the assessment and evaluation of the company doctor;

D. It failed to apply the relevant jurisprudential concepts on disability." [35]

Francisco argues that he should be granted permanent total disability benefits because he was not able to go back to work for more than 120 days. Francisco claims that he is ill-fated due to his medical condition and that he could not go back to his customary work as a seafarer. He asserts that his condition entailed full functional use of his hands and that he had a "significant restriction on his grafting, lifting, carrying powers... [he] could not effectively carry out the duties of constant lifting, pulling, carrying, cleaning equipments and machinery among others, on-board a vessel." [36] He adds that if his condition was not total and permanent, then he should have been summoned back to work, but he was not.

For its part, Marlow argues that Francisco's condition is not equivalent to those that constitute a Grade 1 disability which are considered as total and permanent because those disabilities are more severe and crucial compared to Francisco's left index finger injury, which did not even result in the loss of any of his fingers; hence, his injury should be regarded as merely temporary and partial which could be treated if taken care of properly. [37] To support its argument, Marlow submitted names of their employees who were amputated yet have continued to work as a seafarer in the same position, such as one Mr. Osená whose left index finger was crushed in an accident, but was still able to work as an oiler, which required him to render manual labor. [38]

### ***The Court's Ruling***

We find the petition devoid of merit.

In accordance with the avowed policy of the State to give maximum aid and full protection to labor, the Labor Code concept of permanent total disability has been applied to seafarers, on the notion that disability is intimately related to the worker's capacity to earn, and what is compensated is not his injury or illness but his inability to work resulting in the impairment of his earning capacity. In other words, disability