

THIRD DIVISION

[CA-G.R. SP NO. 134645, November 11, 2014]

**DIAMOND-H MARINE SERVICES & SHIPPING AGENCY, INC.
AND/OR DIAMOND-H SHIPPING CO., LTD./HONGKONG AND MR.
RUBEN TURINGAN, PETITIONERS, VS. NATIONAL LABOR
RELATIONS COMMISSION (FIFTH DIVISION) AND ARNEL C.
CAPUTAN, RESPONDENTS.**

DECISION

DE GUIA-SALVADOR, R., J.:

Assailed in this Petition for Certiorari filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure are the Decision and Resolution issued by the Fifth Division of public respondent National Labor Relations Commission ("**NLRC**") in NLRC LAC No. 03-000334-13, viz: (a) the Decision^[1] dated October 30, 2013, which affirmed with modification the Decision^[2] dated January 31, 2013 rendered by Labor Arbiter Elias H. Salinas in NLRC NCR Case No. (M) NCR 07-11440-12),^[3] and (b) the Resolution^[4] dated December 27, 2013 which denied petitioners' motion for reconsideration of the October 30, 2013 NLRC Decision.

The Facts

Petitioner Diamond-H Marine Services & Shipping Agency, Inc., through its local manning agent, Diamond-H Shipping Company Ltd./Hong Kong ("**Diamond-H**"), is engaged in the shipping business. On July 8, 2011, Diamond-H hired private respondent Arnel C. Caputan ("**Caputan**") as an Able Bodied (A/B) Seaman aboard its vessel *HC Mellina* for nine (9) months.^[5] Aside from being covered by the Total Crew Cost Collective Bargaining Agreement No. F2350 ("**CBA**"),^[6] Caputan's Contract of Employment is also covered by the 2010 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels [2010 Philippine Overseas Employment Administration Standard Employment Contract] ("**2010 POEA-SEC**") .

On March 4, 2012, Caputan figured in an accident when his right forearm got caught between the stationary crane and the moving gantry crane that he rode on while the cargo haul hatch cover was being opened.^[7] He was brought to the Ben Taub General Hospital for treatment where he was diagnosed with "Right Radial and Ulnar Fractures with Compartment Syndrome."^[8] On March 5, 2012, he underwent a surgical procedure called "Open Reduction and Internal Fixation with Plate and Screws, Right Radius and Ulna Fasciotomy, Right Forearm."^[9] On March 7, 2012, he underwent another procedure called "Wound Irrigation, Debridement of Right Forearm Fasciotomy wound application of negative pressure wound vacuum assisted closure dressing", as well as "Closure of the Right Forearm Wound." He was given

medication afterward.^[10]

On March 16, 2012, Caputan was deemed fit to travel so he was repatriated to the Philippines on March 19, 2012. Upon arrival, he was referred to the company-designated clinic, the Marine Medical Services at Metropolitan Medical Center for further medical attention.^[11] After check-up by the attending specialist, he was diagnosed with "S/P Open Reduction and Internal Fixation with Plates and Screws, Right Radio-Ulnar Fracture."^[12] He was then advised to undergo physical therapy.

On June 13, 2012, Caputan's injury was subjected to a repeat x-ray^[13] and he continued his rehabilitation in Butuan City. On July 23, 2012, the attending psychiatrist issued a Psychiatric Report^[14] and the Assistant Medical Coordinator of the Marine Medical Services of the clinic released documents (Brief Clinical History, Medical Certificate and SSS medical claims) as regards Caputan's condition.^[15]

On July 30, 2012, Caputan filed a complaint^[16] for payment of disability benefits, damages and attorney's fees.^[17] The next day, or on July 31, 2012, Caputan consulted Dr. Cesar H. Garcia ("**Dr. Garcia**") who issued a handwritten Orthopedic Surgeon's Report^[18] which summed up the accident and the state of Caputan's injury. Dr. Garcia noted that "[P]atient is ambulatory. The post operative wounds are dry with no signs and symptoms of infection."^[19] Dr. Garcia concluded that Caputan is "still unfit to work as a seaman in an ocean going vessel."^[20]

On August 3, 2012, considering that Caputan already undertook several physical therapy sessions, the company-designated physician, Dr. William Chuasuan, Jr. ("**Dr. Chuasuan**"), assessed that Caputan had a Disability Grade 11 (inability to turn forearm in normal position) based on the 2010 POEA-SEC.^[21] However, during the mediation conference, Caputan manifested that he was claiming maximum disability compensation based on the CBA. Diamond-H then asked Dr. Chuasuan to assess Caputan's disability based on the said CBA. On September 27, 2012, Dr. Chuasuan declared that Caputan had a Disability Grade 10 (stiffness in good working position).^[22] Diamond-H offered to grant Caputan disability benefits based on Disability Grade 10 of the CBA, but he refused and insisted on the maximum disability compensation. Since both parties could not agree on an amicable settlement, they were directed to file their respective pleadings for the Labor Arbiter's consideration.^[23]

Caputan asserted that Dr. Chuasuan fraudulently assessed him with a Grade 10 Disability Rating despite his permanent incapacity to perform his duties as an A/B Seafarer. He added that to dispute the assessment, he sought the medical opinion of Dr. Garcia who in turn estimated that Caputan's healing could take around 120 days and declared that Caputan is "still unfit to work as a seaman in an ocean going vessel."^[24] Furthermore, he stressed that he could no longer use his right arm especially in strenuous activities and in effect could not work properly to earn a living since March 2012. Caputan claimed permanent total disability benefits in the amount of US\$125,000 under the CBA as well as damages and attorney's fees.^[25]

Conversely, Diamond-H argued that Caputan could not claim permanent total disability benefits, damages and attorney's fees because he received the medical

attention he needed which was paid for by Diamond-H. It noted that before Caputan was diagnosed with Grade 11 Disability based on the 2010 POEA-SEC after several physical therapy sessions, he already filed a complaint on July 30, 2012. Since Caputan manifested that he was claiming maximum disability benefits based on the CBA, Diamond-H asked the company-designated physician to assess him again. The same physician issued a Disability Grading of Grade 10, so Diamond-H offered to pay Caputan benefits based on such disability rating but he refused. It insisted that the assessment of the company-designated physician should be controlling based on the 2010 POEA-SEC as opposed to the assessment of Caputan's doctor of choice.^[26]

The Decision of the Labor Arbiter

Labor Arbiter Salinas granted disability benefits to Caputan, ruling that it is the company-designated physician who should declare if the seafarer suffered a permanent disability, whether partial or total. He also held that the assessment of the company-designated physician was based on Section 32 of the 2010 POEA-SEC. He noted that Diamond-H complied with its contractual obligation because it gave full medical attention to Caputan after his accident.^[27] Hence, he awarded Caputan partial permanent disability benefits, but not damages and attorney's fees, *to wit*:

"WHEREFORE, premises considered, premises considered (sic), judgment is hereby rendered ordering respondents Diamond-H Marine Services & Shipping Agency Inc., and/or Diamond-H Shipping Co., Ltd. To pay, jointly and severally, complainant Arniel C. Caputan the amount of Twelve Thousand Five Hundred US dollars (US\$ 12,500.00) or its Philippine peso equivalent at the time of actual payment, representing partial permanent disability benefits under the CBA.

All other claims are dismissed for lack of merit.

SO ORDERED."^[28]

Aggrieved, Caputan then filed an appeal with the NLRC, disputing the allegedly self-serving declaration of the company-designated physician and seeking the declaration of total permanent disability.^[29]

The Decision of the NLRC

The NLRC granted the appeal of Caputan and awarded him total permanent disability benefits and attorney's fees. The NLRC held that although it is the company-designated physician who is tasked to determine the seafarer's disability, it is not final and binding on the seafarer and the courts because the assessment should still be weighed on the merits. The NLRC added that the seafarer can dispute the assessment and consult a doctor of his choice for a second opinion. Furthermore, it noted that even if Caputan's arm had been medically attended to, his performance as an able-bodied seaman has already been affected due to the injury. The NLRC added that the 2010 POEA-SEC is not the only basis in determining the rights of the seafarers, as the Labor Code should also apply and the loss of earning capacity should be taken into account.^[30] The dispositive portion of the

NLRC decision declared:

"**WHEREFORE**, premises considered, the assailed decision of Labor Arbiter Elias H. Salinas is hereby **AFFIRMED with MODIFICATION** in that complainant-appellant is declared to have suffered a permanent total disability. Accordingly, respondent-appellees are hereby ordered to jointly and severally pay appellant the amount of One Hundred Twenty Five Thousand US Dollars (US\$125,000) in accordance with the parties['] CBA.

SO ORDERED."^[31]

Diamond-H filed its motion for reconsideration which the NLRC denied. Hence, Diamond-H filed this petition.^[32]

On April 29, 2014, both parties agreed on a Conditional Satisfaction of Judgment^[33] which provided that since Caputan had received conditional payment from Diamond-H, he would no longer pursue the execution proceedings he initiated to carry out the decision in his favor. Additionally, it ensured Diamond-H that the execution of the document would not prejudice its petition for *certiorari* with the Court of Appeals and that in the event that its petition is granted, Caputan would return the amount which is not due him.^[34]

The Issues

In seeking the reversal of the assailed Decision, petitioner Diamond-H raises the following issues:

"1. THE HONORABLE COMMISSION COMMITTED A SERIOUS REVERSIBLE ERROR AND A GRAVE ABUSE OF DISCRETION IN AWARDING FULL DISABILITY BENEFITS UNDER THE CBA. PRIVATE RESPONDENT IS NOT ENTITLED TO MAXIMUM DISABILITY BENEFITS AS HE IS MERELY SUFFERING FROM DISABILITY GRADE 10 AS ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN.

2. THE MEDICAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIANS PREVAIL OVER THAT OF THE PRIVATE RESPONDENT'S PERSONAL DOCTOR.

3. BY PRIVATE RESPONDENT'S OWN ADMISSION HE DID NOT WEAR PROTECTIVE EQUIPMENT WHEN HE FIGURED IN THE ACCIDENT. SUCH WILLFUL FAILURE ON HIS PART IS CONSIDERED A GROUND FOR THE FORFEITURE OF HIS RIGHT TO CLAIM DISABILITY COMPENSATION FROM RESPONDENTS."^[35]

The Court's Ruling

We find the petition impressed with 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 Filipino 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 should be understood less on its medical significance but more on the loss of earning capacity.^[36]

Well-established under jurisprudence is the principle that entitlement of seafarers to disability benefits does not entirely depend on medical diagnosis but also on (1) the Labor Code and (2) its Implementing Rules and Regulations ("**IRR**"), (3) the 2010 POEA-SEC and (4) the CBA.

Permanent total disability is defined by Article 192(c)(1) of the Labor Code, thus:

"Art. 192. Permanent total disability. – 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 [120], **except as otherwise provided for in the Rules.**"^[37]

"The 120-day period may be extended up to 240 days, under Rule X, Section 2 of the Amended Rules on Employees Compensation^[38] and pursuant to the pronouncement in ***Vergara v. Hammonia Maritime Services, Inc.***^[39] to the effect that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability."^[40]

It is undisputed that Caputan was involved in an accident on March 4, 2012; that he underwent surgery and was repatriated back to the Philippines on March 19, 2012; and that he underwent therapy sessions as advised by the company-designated physician. However, without waiting for the assessment of the company-designated physician regarding his fitness to work, Caputan filed a complaint for disability benefits on July 30, 2012. The next day, or on July 31, 2012, he consulted a doctor of his choice, Dr. Garcia, who declared that he was still unfit to work as a seafarer. It was only on August 3, 2012, after Caputan underwent several physical therapy sessions, that Dr. Chuasuan finally issued him a Grade 11 disability rating based on the 2010 POEA-SEC. Clearly, Caputan preempted the assessment of the company-designated physician when he filed a complaint and consulted a different doctor even before Dr. Chuasuan could assess the degree of his disability. Doing so should have been considered as premature by the labor tribunals.^[41] Meanwhile, due to Caputan's manifestation that he is claiming benefits under the CBA, Dr. Chuasuan further examined and gave him a Grade 10 disability rating based on the CBA on September 27, 2012.