

THIRTEENTH DIVISION

[CA-G.R. SP NO. 136521, November 11, 2014]

**MAGSAYSAY MARITIME CORPORATION, PETITIONER, VS.
DENNIS D. GARCIA, RESPONDENT.**

DECISION

LIBREA-LEAGOGO, J.:

Before this Court is a Petition for Review with urgent prayer for issuance of a temporary restraining order and/or writ of preliminary injunction^[1] dated 04 August 2014 under Rule 43 of the Rules of Court, assailing the Decision^[2] dated 11 April 2014 and Resolution^[3] dated 03 July 2014 of the Panel of Voluntary Arbitrators ("VA Panel, for brevity) composed of AVA Arnel Z. Dolendo (Chairman), AVA Luisito M. Lantin (Member) and AVA Gregorio C. Biales, Jr. (Member), Office of the Voluntary Arbitrator (National Capital Region), National Conciliation and Mediation Board, Department of Labor and Employment in *AC-686-NCMB-NCR-42-07-06-13*, which declared respondent to be permanently and totally disabled and ordered petitioner to pay him disability benefits in the amount of US\$60,000.00, sickness allowance in the amount of US\$2,196.00, plus 10% attorney's fees based on the total award, and denied the Motion for Reconsideration for lack of merit, respectively.

Respondent filed his Comment^[4] dated 29 September 2014, to which petitioner filed its Reply^[5] dated 07 October 2014. Thus, the third paragraph of the Resolution^[6] dated 08 August 2014 is reiterated, and the Petition is submitted for decision.

FACTUAL ANTECEDENTS

Complainant Dennis D. Garcia filed a Notice to Arbitrate^[7] dated 14 February 2013 before the National Conciliation and Mediation Board-National Capital Region ("NCMB-NCR," for brevity) against respondent Marlon R. Roño/ Magsaysay Maritime Corporation ("company," for brevity). He sought sickness allowance, medical reimbursement and disability benefit as provided under the Collective Bargaining Agreement ("CBA," for brevity), attorney's fees and other damages.

In his Position Paper^[8] dated 27 August 2013, complainant alleged, *inter alia*, that: he was engaged by the company for and in behalf of its foreign principal Princess Cruise Lines, Limited as stateroom steward in the latter's vessel M/V Sapphire per Contract of Employment dated 22 August 2012 which was his fifteenth (15th) and last contract; his employment was covered by a CBA; as in his previous engagements, he underwent and passed the Pre-Employment Medical Examination ("PEME," for brevity) conducted by the company-designated physician; in his last deployment, he was declared fit to work by the company-designated physician; as stateroom steward, he was responsible for the daily servicing and cleaning of guest staterooms; he performed on board strenuous tasks such as lifting, carrying,

pulling, pushing or moving provisions and materials; in the performance of his duties, he was constantly exposed to inhalation and direct contact to fumes, gas, dust and various, injurious and harmful chemicals; his work is not confined to the regular eight-to-five schedule but stretched up to long hours of the day or night as he is responsible for various tasks; his frequent overtime works had inevitably caused him tremendous strain and overfatigue; such adverse conditions of work attended by his exposure to varying temperatures of extreme hot and cold as the vessel crossed ocean and geographical boundaries amidst harsh sea weather conditions have made his life on board the moving workplace physically and mentally stressful; he was also exposed to different adjustments to different time zones which was overly stressful; being away from home likewise caused emotional strain; on 30 September 2012, he experienced epigastric pain while on board the ship working as a cabin staff; he was seen by a ship nurse and was given unrecalled liquid medication; he was later seen by the ship doctor; he was subsequently confined at the California Pacific Medical Center on 03 October 2012; his ECG showed acute inferior myocardial infarction; his troponin level was elevated compatible with acute myocardial infarct; he underwent immediate coronary angiography which revealed total occlusion of the right coronary artery; he underwent coronary angioplasty with stenting of the right coronary artery; he was repatriated on 15 October 2012 and had subsequent check-up at the Metropolitan Medical Center; he underwent various laboratory exams including ECG, chest x-ray, 2D echo and stress test; he was maintained on antiplatelets, ace inhibitor, beta blocker and lipid lowering medicines; on 17 October 2012, he was informed that the company will not anymore shoulder his medical expenses on the ground that his illness is allegedly hereditary in nature and not work-related; on 27 November 2012, he wrote to the company pleading to grant him his much needed further treatment; he wrote again on 14 December 2012 stating therein that since his request for further treatment was not favorably acted upon, he was constrained to seek treatment and second opinion from an independent doctor; he was examined and treated by Dr. Efren R. Vicaldo ("Dr. Vicaldo," for brevity) of the Philippine Heart Center, a cardiologist; Dr. Vicaldo diagnosed his illness and assessed his disability as hypertensive cardiovascular disease, coronary artery disease, inferior myocardial infarction, S/P percutaneous coronary intervention on the RCA, impediment Grade 1; Dr. Vicaldo also declared that he is permanently unfit to resume work as a seaman in any capacity and his illness is considered work-related/aggravated; he sought payment of disability benefits from the respondents; since his demands proved futile as the latter refused to acknowledge their contractual obligation, he filed a complaint; during the mandatory conciliation conference, respondents offered the amount of US\$20,900.00 which is equivalent to a Grade 7 disability for the early settlement of the case; he turned down the said offer for settlement since he has a valid claim for disability benefits; he expressed his willingness to settle the case amicably in the amount of US\$55,000.00; and they failed to reach an amicable settlement.

Complainant alleged that: he is entitled to disability benefits and related claims; he was declared fit for sea duty by the company-designated physician before he was deployed to work at the M/V Sapphire; he contracted his illness in the course of and by reason of his employment; two days after he was repatriated, the company already terminated his treatment on the ground that his ailment is allegedly not work-related and hereditary in nature; his illness disabled him from performing his former work as a seaman; he consulted Dr. Vicaldo, an independent cardiologist, who declared him permanently unfit to resume work as a seaman in any capacity

and who stated that his illness is work-related and aggravated with an assessment that he has a Grade 1 disability; he is entitled to disability benefits and illness allowance; from the time that he was repatriated, he had been unable to work as stateroom steward in any ocean-going vessel; when an employee is unable to work for more than 120 days as a result of an injury or illness, his condition constitutes permanent total disability which entitles him to the maximum compensation equivalent to grade 1 disability compensation or US\$60,000.00; and he is also entitled to moral and exemplary damages as well as attorney's fees.

In its Position Paper^[9] dated 11 September 2013, respondent company alleged, *inter alia*, that: complainant was previously employed by the company for and in behalf of its principal Princess Cruise Lines, Limited as stateroom steward; he signed a nine-month POEA approved term contract of employment dated 22 April 2012; after being declared fit to work during the usual routine PEME, he joined his vessel of assignment and commenced his duties as stateroom steward; while on board, he complained of upper mid abdominal pain on 29 September 2012; he was seen by the ship doctor and was given medications which afforded slight relief of symptom; he was brought to the California Pacific Medical Center for admission; cardiac catheterization and percutaneous coronary intervention (angioplasty/stenting) were done; he was discharged on stable condition and repatriated for further medical care; upon arrival in Manila, the seafarer was immediately referred to the company-designated doctor at Marine Medical Services, Metropolitan Medical Center and was diagnosed to have 2 Vessel Coronary Artery disease s/p percutaneous transluminal coronary angioplasty stenting; the specialist confirmed that his condition is not work-related; he was informed that all his future medical expenses would be at his own expense; the company shouldered all the expenses for procedures already done; while he was given a Grade 1 disability by his personal doctor, he was assessed only with a Grade 7 disability by the company doctor; he did not agree to be referred to a third doctor; his claims were denied; and the company sincerely believed that he is not entitled to his claim for total and permanent disability benefits, medical expenses, sickness allowance, damages and attorney's fees.

Respondent company averred that: complainant is not entitled to any contractual benefits such as disability benefits, sickness allowance, and reimbursement of alleged medical expenses; there is absolutely no evidence on record to show that his coronary heart disease is a work-related ailment; research shows that coronary artery disease or coronary heart disease is a common term for the buildup of plaque in the heart's arteries that could lead to heart attack; per the company doctor's report, coronary artery disease is due to deposition of fats, fibrin, clots in the coronary artery occurring slowly after several years and that its etiology (diabetes mellitus, age, sex, hypertension, elevated cholesterols and smoking) are not considered work-related; the complainant's doctor, Dr. Vicaldo, only stated that his illness is considered work-related/aggravated without explaining how or why he made the said conclusion; without any evidence to establish work-relation, his claim for total and permanent disability benefits must necessarily be denied; under Section 20 (A) of the POEA Contract, only occupational diseases or work-related illnesses are compensable; an employer assumes liability for illness or injury acquired during the term of the contract of employment provided the same is also established as work-related; the evidence demonstrates that he has not suffered any grave impediment which would justify his exaggerated claim for total and permanent disability benefits; assuming that he is disabled, the worst is that he is suffering from a Grade 7 disability which is equivalent to US\$20,900.00; the findings

of the company-designated physician should be given credence and great weight; he is not entitled to moral and exemplary damages as well as attorney's fees; the denial of his claims is premised on factual and legal bases and cannot be imputed with bad faith or malice which would warrant an award of damages and attorney's fees; and the complaint against Marlon Roño should be dropped as there is no employer-employee relationship between him and the complainant.

Respondents filed their Reply^[10] dated 30 October 2013. It appears that complainant filed a Rejoinder on 15 November 2013.^[11]

On 11 April 2014, the VA Panel rendered the assailed Decision,^[12] the dispositive portion of which reads:

***"WHEREFORE, PREMISES CONSIDERED,** decision is hereby rendered declaring DENNIS D. GARCIA to be permanently and totally disabled and ORDERING Magsaysay Maritime Corporation to pay Dennis D. Garcia his disability benefits under the POAE-SEC (sic) in the amount of US\$60,000.00 and sickness allowance in the amount of US\$2,196.00 and to also pay 10% attorney's fees computed based on the total award, all at their peso equivalent at the time of actual payment.*

All other claims are dismissed for lack of merit.

SO ORDERED."^[13]

Respondent company filed a Motion for Reconsideration^[14] dated 20 June 2014, to which complainant filed his Opposition^[15] dated 04 July 2014. On 03 July 2014, the VA Panel issued the assailed Resolution,^[16] denying the Motion for Reconsideration for lack of merit.

Hence, this Petition for Review.

R U L I N G

Petitioner raises the following arguments in support of its Petition, viz:

"1. Respondent seafarer is not entitled to any contractual benefits (i.e. disability benefits, sickness allowance, reimbursement of alleged medical expenses).

x x x x

2. Respondent seafarer is not entitled to attorney's fees. Petitioner's denial of the claims is premised on factual and legal basis (sic) and as such, cannot be imputed with bad faith or malice which would warrant an award of attorney's fees."^[17]

Petitioner contends, *inter alia*, that: there is absolutely no evidence on record to show that the respondent's supposed coronary heart disease is a work-related ailment; the comment of respondent's doctor Dr. Vicaldo, that his illness is work-related/aggravated, is mere conjecture for there is no explanation as to how he arrived at the said conclusion; respondent's illness was not incorporated in the POEA Schedule of Disabilities, as amended in 2010; under Section 20 (A) of the POEA Contract, only occupational diseases or work-related illnesses are compensable; none of the conditions set forth under Section 32-A No. 11 of the POEA Contract was met to make respondent's heart condition compensable; it remained incumbent upon the respondent to discharge the required quantum of proof of compensability; in the absence of any substantial evidence to prove work-relation, the claim must necessarily be denied; the evidence shows that the respondent has not suffered any grave impediment which would justify his exaggerated claim for total and permanent disability benefits; assuming he is disabled, his condition is only equivalent to a Grade 7 disability; the company-designated physicians, after treating the respondent for several months before he abandoned his treatment, assessed him as having a Grade 7 or partial disability; the findings of the company-designated physicians should be given credence and great weight; there was no bad faith or malice on the part of petitioner when it denied respondent's claims as the same is based on express contractual provisions; and the VA Panel should not have awarded respondent with attorney's fees in the same way that the claim for damages were denied. Petitioner further stated its allegations in support of its application for the issuance of a TRO and/or writ of preliminary injunction.

Respondent ripostes, *inter alia*, that: his 2-vessel coronary artery disease is a work-related occupational disease, hence, compensable; coronary artery disease is a cardio-vascular disease which is an occupational illness listed under the POEA Standard Employment Contract; being an occupational disease, it is necessarily a work-related illness; all the conditions for the compensability of his coronary artery disease are present; his work as a stateroom steward on board petitioner's vessel has been physically, mentally and emotionally stressful; he has to contend with constantly changing weather conditions as the vessel crossed boundaries which was compounded by his being away from his loved ones; he has been working with petitioner since the year 2000 and had finished 15 consecutive contracts of employment; in his more than 10 years of employment with petitioner he was never diagnosed to be suffering from any coronary disease; when he underwent the usual PEME, he was always declared as fit to work by the company-designated physician; being a work-related illness, he is entitled to disability benefits and to an illness allowance; his disability is permanent and total; his condition now prevented him from going back to his usual work as a seaman and his earning capacity as a seafarer has already been impaired; he was correctly awarded his claim for attorney's fees since he was compelled to litigate in order to protect his interest.

Stripped of verbiage, the threshold issue in this Petition for Review is whether or not the VA Panel erred in declaring respondent as permanently and totally disabled and in ordering petitioner to pay him disability benefits under the POEA-SEC in the amount of US\$60,000.00, sickness allowance in the amount of US\$2,196.00 and 10% attorney's fees based on the total award, and in denying petitioner's Motion for Reconsideration for lack of merit.

We find in the negative. Not being entitled to the reliefs demanded in its Petition,