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Third Division

SEP 14 2016

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

EDUARDO C. SILAGAN,
Petitioner,

- *versus* -

SOUTHFIELD AGENCIES, INC., VICTORIANO A. BASCO and/or HYUNDAI MERCHANT MARITIME, CO., LTD.,*
Respondents.

G.R. No. 202808

Present:

VELASCO, JR., *J.*,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

August 24, 2016

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DECISION

PEREZ, *J.*:

For resolution of the Court is this Petition for Review on *Certiorari*[1] filed by petitioner Eduardo C. Silagan (petitioner), seeking to reverse and set aside the Decision[2] dated 27 December 2011 and Resolution[3] dated 24 July 2012 of the Court of Appeals (CA) in CA-G.R. SP. No. 101549. The assailed decision and resolution reversed the National Labor Relations

* Respondent's name is stated as Hyundai Merchant Marine Co., Ltd. in the other parts of the records.

1 *Rollo*, pp. 8-32.

2 Id. at 280-297; penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Jose C. Reyes, Jr. and Agnes Reyes-Carpio, concurring.

3 Id. at 310-311.

Commission (NLRC) Decision[4] dated 15 June 2007 and its Resolution[5] dated 9 October 2007 which ordered respondents Hyundai Merchant Maritime Co., Ltd. and Southfield Agencies, Inc. to pay petitioner the amount of US$50,000.00 representing his disability benefits.

The Facts

Respondent Hyundai Merchant Maritime Co., Ltd. is a foreign juridical entity engaged in maritime business. It is represented in the Philippines by its manning agent, and co-respondent herein, Southfield Agencies, Inc., a corporation organized and existing under Philippine laws. Southfield Agencies, Inc., in turn, is represented in this action by its co-respondent Victoriano A. Basco.

On 16 October 2003, petitioner was hired by Hyundai Merchant Maritime Co., Ltd. thru its manning agent, Southfield Agencies, Inc. as Third Mate on board ocean-going vessel, M/V "Eternal Clipper". His employment was to run for a period of ten (10) months and he was to receive, *inter alia*, a basic monthly salary of US$679.00 with an overtime pay of US$461.00, as evidenced by his Contract of Employment.[6] Under this contract, petitioner is covered by the Collective Bargaining Agreement[7] (CBA) between the Federation of Korean Seafarer's Union/Associated Marine Officers' and Seamen's Union of the Philippines and herein respondents.

Prior to the execution of the contract, petitioner underwent a thorough Pre-Employment Medical Examination (PEME) and after compliance therewith, he was certified as *"fit to work"* by the company designated physician.

On 28 October 2003, petitioner joined the ship M/V "Eternal Clipper" and commenced his work on board the sea going vessel. While the ship was *en route* to Japan from Mexico on 4 January 2004, petitioner's right hand was slammed by a wooden door while he was performing his duties. As a result thereof, petitioner suffered a wrist injury causing him extreme physical pain on the right hand area of his body. The incident was immediately reported to petitioner's superior who gave him medication and advised him to perform light duties while his condition was being treated.

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4 Id. at 197-202.
5 Id. at 203-204.
6 Id. at 33.
7 Id. at 34-42.

Upon arrival of the vessel in Pyeongtaek, Korea on 29 January 2004, petitioner was brought to the hospital upon complaints of persistent pain where he was diagnosed with *"fracture, closed, distal third radius and comminuted, with ulna head dislocation."* To alleviate the pain, an oral medication was prescribed for petitioner and he was advised to undergo surgery. Due to the progression of his condition's symptoms, petitioner was repatriated back to the Philippines on 2 February 2004.

Upon arrival in Manila, petitioner was immediately seen by Dr. Natalio G. Alegre, II (Dr. Alegre), the company designated physician, who initially assessed petitioner's physical condition. Dr. Alegre came out with the diagnosis that petitioner suffered "fracture, closed, distal third, radius comminuted, with ulna head dislocation." A surgery to correct his condition was recommended.

On 13 February 2004, petitioner underwent *"Open Reduction, Plating with Bone Grafting (Synthetic Bone Graft-Osteopore, Right) and Application of External Fixator Right"* at St. Lukes Medical Center with Dr. Antonio Tanchuling, Jr. (Dr. Tanchuling) as his surgeon. The surgery proved to be successful and he was discharged from confinement on 18 February 2004. On 1 April 2004, petitioner underwent another surgery for the removal of the external fixator and was discharged the following day. After the second surgery, petitioner underwent physical therapy to facilitate for the complete rehabilitation of his injured hand.

On 1 June 2004, petitioner was declared *"fit to resume former work"* by Dr. Alegre.[8]

For failure of the company designated physician to assess his disability grading, petitioner sought an independent orthopedic surgeon, Dr. Marciano F. Almeda, Jr. (Dr. Almeda), to evaluate the condition of his injury. In a Medical Report dated 3 August 2004, Dr. Almeda found that petitioner was "partially and permanently disabled with Grade II (14.93%) impediment." The pertinent portion of the Medical Report[9] reads:

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> On physical examination, there was note of slight atrophy of the right forearm muscles. Scars from pin tracts were likewise noted. There is an 8-9 cm[.] longitudinal surgical scar along the volar aspect of the right wrist extending proximally. Wrist motion in flexion and extension is also

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8 Id. at 75.
9 Id. at 76-77.

limited. Manual muscle testing is 4-5/5 on the right with weak grip strength.

Official results of his x-rays are not available.

Impression:

Fracture, closed, comminuted, distal third, radius, right with ulnar head dislocation.

S/p open reduction, plating with bone grafting (synthetic bone graft-osteopore) and application of external fixator.

Presently, [petitioner] continue to have pain and restricted motion of his right wrist. The forearm has lost it's (sic) usual strength from months of immobilization. He has lost his pre[-]injury capacity, and is not fit to work back to his previous work as a Seaman. He is ***partially and permanently disable*** with ***Grade II Impediment*** based on the POEA Contract."

Armed with the foregoing Medical Report, petitioner sought for the payment of disability benefits under the CBA by filing a claim against the respondents.[10] He averred that under the terms of the said agreement between the Federation of Korean Seafarer's Union/Associated Marine Officers' and Seamen's Union of the Philippines and herein respondents, a seafarer with an assessed disability of less than 50% but certified as permanently unfit is entitled to 100% compensation.[11] For failure of the respondents to acknowledge their purported obligation under the CBA, petitioner initiated an action for the recovery of disability benefits, sickness allowance, reimbursement of medical expenses and damages before the Labor Arbiter.[12]

For their part, respondents disavowed liability under the CBA by claiming that petitioner was successfully treated of his condition from the moment he was repatriated to the Philippines until he was certified to go back to work by the company designated physician.[13] During this interval, petitioner was under extensive medical treatment wherein he underwent surgery twice and several sessions of physical therapy to facilitate his complete recovery from his injury. The costs for the medical treatment were defrayed by the respondents in full and petitioner received sickness allowance during the period of his medical treatment.[14] Respondents also claimed that petitioner previously initiated similar action before the Labor

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10 Id. at 79-80.
11 Id. at 110-120.
12 Id.
13 Id. at 81-109.
14 Id.

Arbiter but decided to withdraw the same after the case was amicably settled by the parties and petitioner released respondents from liability by signing a Release, Waiver and Quitclaim.[15] Respondents thus claimed that petitioner is barred by *res judicata* from filing the instant case against the respondents.[16]

For lack of merit, the Labor Arbiter dismissed the complaint of the petitioner in a Decision[17] dated 22 September 2005. The Labor Arbiter held that the certification issued by the company designated physician that petitioner is *"fit to work"* negates his claim for the entitlement of disability benefits. He dismissed the Medical Report of Dr. Almeda as not binding because the physician only saw the patient during a lone consultation and "he was not subjected to the same examination treatment and monitoring as that undertaken by the company-designated physician."

On appeal, the NLRC reversed the ruling of the Labor Arbiter in a Decision dated 15 June 2007 thereby ordering respondents to pay the amount of US$50,000.00 as disability compensation.[18] The Commission held that petitioner's failure to go back to work for 147 days is conclusive of permanent total disability that warrants the payment of compensation following the ruling of the Court in *Crystal Shipping, Inc. v. Natividad*[19] which states that a seaman's inability to perform his usual work for more than 120 days constitutes permanent total disability. The *fallo* of the NLRC Decision reads:

> "**WHEREFORE**, the decision appealed from is hereby **REVERSED**. The respondents are hereby ordered to pay the complainant disability compensation amounting to US$50,000.00, or its equivalent in Philippine currency at the time of payment, plus attorney's fee equivalent to ten percent (10%) of the said amount.
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> SO ORDERED."[20]

For lack of merit, the Motion for Reconsideration of the respondents was denied by the NLRC in a Resolution.[21]

Finding that the NLRC gravely abused its discretion in adjudging respondents liable for disability benefits, the CA reversed its findings in a

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15 Id. at 87.
16 Id. at 88.
17 Id. at 171-177.
18 Id. at 201.
19 510 Phil. 332, 340 (2005).
20 *Rollo*, p. 202.
21 Supra note 5.

Decision.[22] According to the appellate court, the company designated physician's finding on petitioner's health condition is "the final determination of the latter's fitness to return to work." For one, it was Dr. Silagan who closely monitored the physical condition of the petitioner from the time he was repatriated until the time that he underwent surgeries and physical therapy thereby acquiring familiarity with the progression or improvement of petitioner's injury symptoms. In contrast, Dr. Almeda only examined the petitioner once and his conclusion was based on the medical records brought by petitioner to him. Aside from the Medical Report issued by Dr. Almeda, no other proof was adduced by petitioner to substantiate his claim. In addition, the appellate court adjudged that the invocation of the ruling of the Court in *Crystal Shipping v. Natividad* is misplaced because it was explicitly provided in the text of the decision that "[t]his declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations." In conclusion, the CA held, "[e]ven if WE apply the 120-day rule relied upon by the NLRC, [petitioner] still cannot claim disability benefits because he was declared fit to return to work 147 days after the injury, which is within the 240-day period provided by law." The disquisition of the CA Decision reads:

> "**WHEREFORE**, the instant petition is **GRANTED**. The June 15, 2007 Decision and October 9, 2007 Resolution of the National Labor Relations Commission (NLRC), Second Division, finding petitioners Southfield Agencies, Inc., Hyundai Merchant Maritime Co. Ltd., and Victoriano A. Basco liable for disability compensation and attorney's fees to Eduardo C. Silagan are hereby **REVERSED and SET ASIDE**. The Decision of the Labor Arbiter dated September 22, 2005 is hereby **REINSTATED**.
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> **SO ORDERED**."[23]

Similarly ill-fated was petitioner's Motion for Reconsideration which was denied by the appellate court in a Resolution.[24]

The Issue

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22 Supra note 2.
23 Id. at 297.
24 Supra note 3.

Unflinching, petitioner is now before this Court *via* this instant Petition for Review on *Certiorari* assailing the Courts of Appeals' Decision and Resolution on the following grounds:

> I.
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> THE COURT OF APPEALS COMMITTED A SERIOUS FACTUAL ERROR WHEN IT SUSTAINED THE FIT TO WORK CERTIFICATION BY THE COMPANY-DESIGNATED PHYSICIAN[;]
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> II.
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> THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT APPLYING THE APPROPRIATE JURISPRUDENCE AND LAW REGARDING TOTAL AND PERMANENT DISABILITY AND IN NOT AWARDING HIM ATTORNEY'S FEES.[25]

The Court's Ruling

The Court resolves to deny the petition.

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, Series of 2000 of the Department of Labor and Employment, and the parties' CBA bind the seaman and his employer to each other.[26]

Section 20 (B), paragraphs (2), (3) and (6) of the 2000 POEA-SEC[27] reads:

> Section 20-B. *Compensation and Benefits for Injury or Illness.*
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> The liabilities of the employer when the seafarer suffers **work-related injury or illness** during the term of his contract are as follows:

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25 Id. at 15-16.

26 *Magsaysay Maritime Corp., et al. v. NLRC (2nd Division), et. al.*, 630 Phil. 352, 363-364 & 362 (2010).

27 Department Order No. 4, series of 2000 is entitled Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels.

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[2. . . . .]

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is **declared fit or the degree of his disability has been established by the company-designated physician**.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is **declared fit to work or the degree of permanent disability has been assessed by the company-designated physician** but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a **company-designated physician** within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.[28] (Emphasis supplied)

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6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.[29]

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[30]

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28 Supra note 26 at 363-364.
29 Id. at 362.
30 Id. at 362-363.

The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[31]

The ultimate question that needs to be addressed in the case at bar is whether or not the petitioner is entitled to disability benefits under the circumstances.

In insisting that he is entitled to disability benefits, petitioner faults the appellate court in dismissing the medical findings of Dr. Almeda who is an orthopedic surgeon and in lending credence to the opinion of the company designated physician. It was Dr. Almeda who opined that because of the intra-ventricular involvement of petitioner's fracture, there is a limitation in the joint motion of his right hand and he is suffering from residual pain which incapacitates him from lifting heavy objects and operating machines on the ship. Citing the ruling of the Court in *Remigio v. NLRC*,[32] petitioner argues that disability should not be understood more on its medical significance but on the loss of work of similar nature that he was trained for or accustomed to perform. Since petitioner has lost its capacity to perform his customary duty on board the vessel because of the injury he sustained on the occasion of his job, he insists that he is entitled to the payment of disability benefits.

We do not agree.

First, Dr. Almeda's assessment was merely based on the physical examination he conducted on the petitioner and on the medical records brought by the latter on the occasion of his consultation. No diagnostic tests or any medical procedure was conducted by Dr. Almeda to support his disability grade finding. As aptly observed by the appellate court, Dr. Almeda examined the petitioner only once and could not possibly form a reliable opinion of petitioner's fitness to work based on a single consultation. In contrast, Dr. Alegre was able to closely monitor the condition of petitioner's injury from the day after he was repatriated on 2 February 2004 up to the time that he underwent surgery and rehabilitation and until his disability rating was issued on 4 June 2004. On the basis of the recession of symptoms, the progress of which the company designated physician has observed for four months, he has a reasonable basis to arrive

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31 Id. at 363.

32 521 Phil. 330, 347 (2006).

at the conclusion that the petitioner is already fit to render work of similar nature as he was previously engaged.

This is not the first time that the Court upheld the findings of the company designated physician who has an unfettered opportunity to track the physical condition of the seaman in prolonged period of time versus the medical report of the seafarer's personal doctor who only examined him once and who based his assessment solely on the medical records adduced by his patient. Thus in *Formerly INC Shipmanagement, Incorporated v. Rosales,*[33] we ruled:

> "Even granting that the complaint should be given due course, we hold that the company-designated physician's assessment should prevail over that of the private physician. The company-designated physician had thoroughly examined and treated Rosales from the time of his repatriation until his disability grading was issued, which was from February 20, 2006 until October 10, 2006. In contrast, the private physician only attended to Rosales once, on November 9, 2006. This is not the first time that this Court met this situation. Under these circumstances, the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records." (Emphasis omitted)

Second, petitioner failed to comply with the procedure laid down under Section 20 (B) (3) of the 2000 POEA-SEC with regard to the joint appointment by the parties of a third doctor whose decision shall be final and binding on them in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail.[34] In other words, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.[35]

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> We are thus compelled to dismiss the present complaint, as we had similarly done in *Philippine Hammonia,* to impress upon the public the significance of a binding obligation. This pronouncement shall not

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33 737 SCRA 438, 453 (2014).
34 Id. at 450.
35 Id. at 452.

> only speed up the processing of maritime disability claims and decongest court dockets; more importantly, our ruling would restore faith and confidence in obligations that have voluntarily been entered upon. As an institution tasked to uphold and respect the law, it is our primary duty to ensure faithful compliance with the law whether the dispute affects strictly private interests or one imbued with public interest. We shall not hesitate to dismiss a petition wrongfully filed, or to hold any persons liable for its malicious initiation."[36] (Citation omitted)

In fine, given that petitioner's permanent disability was not established through substantial evidence for the reasons above-stated, the Court of Appeals did not err in reversing the NLRC ruling for having been rendered with grave abuse of discretion. Verily, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, when the evidence presented negates compensability, the claim for disability benefits must necessarily fail,[37] as in this case.

WHEREFORE, premises considered, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals are hereby **AFFIRMED.**

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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36 Id. at 454.

37 *Belmonte, Jr., v. C.F. Sharp Crew Management, Inc.*, G.R. No. 209202. November 19, 2014, 741 SCRA 395, 407.

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

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