



Republic of the Philippines  
Supreme Court  
Manila

SPECIAL THIRD DIVISION

OSM MARITIME SERVICES, INC.  
AND/OR MAILYN PERENA  
BORILLO,

Petitioners,

- versus -

NELSON A. GO,

Respondent.

G.R. No. 238128

Present:

LEONEN, J., *Chairperson*,  
HERNANDO,  
INTING,  
LOPEZ, J., and  
MARQUEZ, JJ.

Promulgated:

February 20, 2023

*Mis DCB-H*

X-----X

RESOLUTION

LOPEZ, J., J.:

This Court resolves the Motion for Partial Reconsideration<sup>1</sup> filed by respondent Nelson A. Go (*Go*), seeking reconsideration of the Decision<sup>2</sup> of this Court in the above-mentioned case G.R. No. 238128, insofar as the reinstatement of the award of attorney’s fees is concerned.

Facts

Go worked as an Oiler/Motorman for petitioner OSM Maritime Services, Inc. (*OSM*) since 2009.<sup>3</sup> After some time, he experienced dizziness, vomiting, chest pain and shortness of breath while onboard his vessel of

<sup>1</sup> *Rollo*, pp. 170-174.

<sup>2</sup> The February 17, 2021 Decision was penned by Associate Justice Edgardo L. Delos Santos (retired member of this Court) and concurred in by Senior Associate Justice Marvic Mario Victor F. Leonen, and Associate Justices Ramon Paul L. Hernando, Henri Jean Paul B. Inting and Jhosep Y. Lopez, of the Former Third Division of the Supreme Court; *id.* at 157–169.

<sup>3</sup> *Id.* at 157.

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assignment. He was medically repatriated in 2015. The following day, the company-designated physician examined Go and diagnosed him with hypertension, *Meniere's Disease* and myofascial spasm.<sup>4</sup> Nonetheless, he was certified fit to resume sea duties.<sup>5</sup>

To prepare for his next embarkation, Go underwent his Pre-Employment Medical Examination (*PEME*) at the Maritime Clinic for International Seafarers (*MCIS*). Dr. Olivia Salve T. Sales (*Dr. Sales*), the company physician, explained that Go's medical condition, *Meniere's Disease*, is a disease of unknown origin that causes progressive deafness, ringing in the ears and vertigo. For this reason, she declared Go unfit to resume sea duties.<sup>6</sup> Dr. Sales informed OSM *via* email that Go could not be cleared due to his medical condition.<sup>7</sup>

Later on, Go consulted with his own physician, Dr. Radentor Viernes, who issued a medical certificate which stated that his condition, *Meniere's Disease*, was work-related and work-aggravated.<sup>8</sup> The pertinent portions of the medical certificate reads:

The work of Mr. Go as an Oiler/Motorman onboard the vessel exposed him to loud and deafening engine noises, engine heat and harmful chemicals inherent in engine oils. Considering the continued exposure of Mr. Go to these health hazards onboard the vessel taking into account his length of service as an Oiler/Motorman, had contributed mainly to a very great possibility, for him to contract these illnesses and/or have aggravated the same while onboard the vessel.

In my opinion, the nature of Mr. Go's employment as Oiler/Motorman onboard the vessel is the cause of his illness and/or aggravated the same. His illnesses are, therefore, work-related and work-aggravated as the same were caused and had developed due to the nature of his job and in the performance of his duties as a seaman. He is no longer fit to go back to work as a seaman in any capacity.<sup>9</sup>

Consequently, Go filed a complaint for permanent and total disability benefits in the amount of USD 90,000.00, plus damages and attorney's fees.<sup>10</sup>

After due proceedings, the labor arbiter rendered a Decision<sup>11</sup> which held that his illness is work-related and thus compensable.<sup>12</sup> Nonetheless, the labor arbiter only granted him partial disability benefit in the amount of USD

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<sup>4</sup> *Id.* at 158.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 159.

<sup>11</sup> The December 27, 2016 Decision was penned by Labor Arbiter Julia Cecily Coching Sosito; *id.* at 92–98.

<sup>12</sup> *Id.*

3,366.00 plus 10% attorney's fees, or an aggregate amount of USD 3,702.60.<sup>13</sup>

Not satisfied, Go appealed to the National Labor Relations Commission.<sup>14</sup>

On February 27, 2017, the National Labor Relations Commission rendered a Decision<sup>15</sup> which ruled that Go's condition is not work-related. This notwithstanding, the National Labor Relations Commission retained the award of USD 3,702.60 since OSM did not interpose an appeal, which made the ruling of the Labor Arbiter final and executory as to them.<sup>16</sup> The National Labor Relations Commission also denied Go's motion for reconsideration, which prompted him to elevate the case before the Court of Appeals (CA).<sup>17</sup>

In its Decision,<sup>18</sup> the CA reversed and set aside the ruling of the National Labor Relations Commission and awarded Go permanent and total disability benefits in the amount of USD 90,000.00 plus 10% attorney's fees.<sup>19</sup> The CA also issued a Resolution<sup>20</sup> which denied OSM's motion for reconsideration.

Undaunted, OSM brought the case before this Court *via* a Petition for Review on *Certiorari* under Rule 45.<sup>21</sup>

On February 17, 2021, this Court rendered a Decision,<sup>22</sup> which denied the Petition and affirmed the grant of full disability benefits to Go. This Court opined that the permanent and incurable nature of *Meniere's Disease*, would definitely deprive Go of gainful employment.<sup>23</sup> However, this Court deleted the award of attorney's fees since there was no showing that OSM acted in bad faith in any of their dealings with Go.<sup>24</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> The February 27, 2017 Decision in NLRC Case No. NCR-09-11032-16 was penned by Commissioner Cecilio Alejandro C. Villanueva and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.; *id.* at 100–112.

<sup>16</sup> *Id.* at 160.

<sup>17</sup> *Id.*

<sup>18</sup> The January 5, 2018 Decision in CA-G.R. SP No. 151145 was penned by Presiding Justice Romeo F. Barza (now retired) and concurred in by Associate Justices Mario V. Lopez (now a member of this Court), and Victoria Isabel A. Paredes, of the First Division of the Court of Appeals, Manila; *id.* at 10–23.

<sup>19</sup> *Id.* at 21–22.

<sup>20</sup> The March 14, 2018 Resolution in CA-G.R. SP No. 151145 was penned by Presiding Justice Romeo F. Barza (now retired) and concurred in by Associate Justices Mario V. Lopez (now a member of this Court), and Victoria Isabel A. Paredes, of the Former First Division of the Court of Appeals, Manila; *id.* at 25–26.

<sup>21</sup> *Id.* at 113.

<sup>22</sup> *Id.* at 157–169.

<sup>23</sup> *Id.* at 167.

<sup>24</sup> *Id.* at 168.

Displeased, Go filed a Motion for Partial Reconsideration<sup>25</sup> contending that the award of attorney's fees is proper since OSM refused to pay him disability benefits, despite the company physician's assessment during his PEME that he was already unfit to resume sea duties.<sup>26</sup> Consequently, he was constrained to consult with his own physician and file a case before the labor arbiter to protect his interest.<sup>27</sup>

Go's motion merited a Comment<sup>28</sup> from OSM where they maintained that Go is not entitled to an award of attorney's fees because there was no bad faith on their part as borne by the fact that they had been diligent in providing him medical attention and treatment after he was medically repatriated.<sup>29</sup>

### Issue

Whether Nelson A. Go is entitled to claim attorney's fees

### This Court's Ruling

After taking a second look at the surrounding circumstances of the case, this Court finds the motion for partial reconsideration **meritorious**. At this juncture, it bears to stress that the labor arbiter adjudged OSM liable to pay Go the following money awards: a) partial disability benefits amounting to USD 3,702.60; and b) attorney's fees equivalent to 10% thereof.<sup>30</sup>

Extant from the records is the fact that only Go appealed to the National Labor Relations Commission.<sup>31</sup> OSM no longer interposed an appeal which rendered the ruling of the labor arbiter final and executory as to them.<sup>32</sup> Thus, the National Labor Relations Commission retained the monetary award granted by the labor arbiter despite denying Go's appeal.<sup>33</sup> Notably, the said monetary award consists not only of the partial disability benefits but also the attorney's fees equivalent to 10% thereof.<sup>34</sup> Consequently, OSM is already precluded from assailing the grant of attorney's fees in favor of Go since their failure to file an appeal within the reglementary period rendered its award final and executory as to them.

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<sup>25</sup> *Id.* at 170–174.

<sup>26</sup> *Id.* at 171.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 202–205.

<sup>29</sup> *Id.* at 203.

<sup>30</sup> *Id.* at 97.

<sup>31</sup> *Id.* at 111.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 97.

Even if this Court were to overlook this circumstance, the records bear that OSM refused to pay disability compensation, despite the declaration of the company-designated physician herself, that Go is unfit to resume sea duties because of his medical condition.<sup>35</sup> Owing to this fact, Go was compelled to litigate to secure the payment of his disability claims. In *Chan v. Magsaysay Maritime Corp.*,<sup>36</sup> this Court awarded the seafarer attorney's fees since he was compelled to litigate to satisfy his claim for disability benefits even if there was no finding of malice or bad faith on the part of his employers. Accordingly, this Court finds it proper to reinstate the award of attorney's fees since Go was compelled to litigate to recover what was rightfully due him.

In sum, this Court reinstates the award of attorney's fees based on the following grounds: 1) the decision of the labor arbiter which awarded Go partial disability benefits and attorney's fees equivalent to 10% of the amount adjudged is already final and executory as to OSM for failing to interpose an appeal within the reglementary period; and 2) Go was compelled to litigate to claim his disability benefits.

**ACCORDINGLY**, the Motion for Partial Reconsideration is **GRANTED**. The Decision of this Court dated February 17, 2021 is **AFFIRMED** with **MODIFICATION**. Petitioner OSM Maritime Services, Inc. is **ORDERED** to **PAY** respondent Nelson A. Go permanent disability benefits in the amount of USD 90,000.00 or its equivalent in Philippine currency at the time of payment and attorney's fees equivalent to ten percent (10%) thereof. In addition, the total monetary award shall earn legal interest at the rate of six percent (6%) per annum from the finality of this Resolution until fully paid.

**SO ORDERED.**


  
**JHOSEP Y. LOPEZ**  
Associate Justice

**WE CONCUR:**


  
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice  
Chairperson

<sup>35</sup> *Id.* at 158.


<sup>36</sup> G.R. No. 239055, March 11, 2020. [Per J. Lazaro-Javier, First Division].



**RAMON PAUL L. HERNANDO**  
Associate Justice



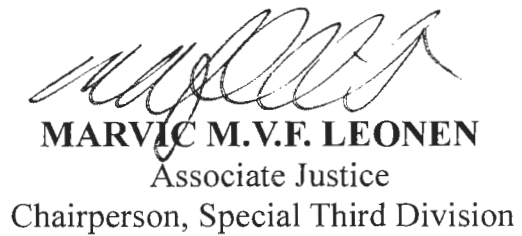
**HENRI JEAN PAUL B. INTING**  
Associate Justice



**JOSE MIDAS T. MARQUEZ**  
Associate Justice

**ATTESTATION**

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



**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson, Special Third Division

**CERTIFICATION**

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



**ALEXANDER G. GESMUNDO**  
Chief Justice