



Republic of the Philippines
SUPREME COURT
Manila

Mis. JDC Batt
MISAELO B. BINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division
AUG 17 2017

THIRD DIVISION

**HOEGH FLEET SERVICES
PHILS., INC., and/or HOEGH
FLEET SERVICES AS,**
Petitioners,

G.R. No. 230481

- versus -

BERNARDO M. TURALLO,
Respondent.

X -----X
BERNARDO M. TURALLO,
Petitioner,

G.R. No. 230500

Present:

- versus -

**HOEGH FLEET SERVICES
PHILS., INC., and/or HOEGH
FLEET SERVICES AS,**
Respondents.

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

Promulgated:

X -----X
July 26, 2017
[Signature]

RESOLUTION

VELASCO, JR., J.:

These are consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court, which seek to reverse and set aside the Decision¹ dated November 8, 2016 of the Court of Appeals (CA) and its Resolution² dated March 8, 2017 in CA-G.R. SP No. 142979. There, Hoegh Fleet Services Phils., Inc. and/or Hoegh Fleet Services AS (hereinafter referred to as Hoegh Fleet) was ordered to pay Turallo US\$90,000.00,

*Additional Member per raffle dated April 12, 2017.

¹ *Rollo* (G.R. No. 230481), pp. 24-33. Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Noel G. Tijam and Eduardo B. Peralta, Jr.

² *Id.* at 35-36.

US\$3,084.54 and US\$1,000.00 as disability compensation, sickness allowance and attorney's fees, respectively.³

The facts, as found by the CA, are as follows:

On 9 November 2012, petitioners hired Turallo as a Messman on board vessel "Hoegh Tokyo" for nine (9) months. The employment contract was signed on 27 December 2012, which was also covered by a Collective Bargaining Agreement between the Associated Marine Officers' and Seaman's Union of the Philippines and Hoegh Fleet Services AS, represented by Hoegh Fleet Services Phils., Inc.

Turallo was found "fit for sea duty" in the Pre-Employment Medical Examination (PEME).

On 2 January 2013, Turallo boarded the vessel.

Sometime in September 2013 while on board the vessel, Turallo felt pain on the upper back of his body and chest pain, which was reported to his superiors on 23 September 2013, as evidenced by the "Incident/Accidents Personnel" signed by Turallo's department head and the master of the vessel. On 24 September 2013, Turallo was referred to a doctor by the ship's captain. Said referral also mentioned that Turallo was discharged from the ship on 23 September 2013.

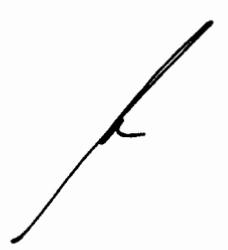
Upon arrival in Manila, Turallo was referred to the company-designated physician, who in turn referred him to an orthopedic surgeon and cardiologist. He underwent medical and laboratory tests and was advised to return on 27 September 2013 for re-evaluation.

On 27 September 2013, Turallo underwent MRI of the cervical spine and left shoulder and EMG-NCV on 30 September 2013.

On 4 October 2013, after the said tests, the company-designated physician diagnosed Turallo with "Acromioclavicular Joint Arthritis; Bicep Tear and Cuff Tear, Left Shoulder; Cervical Spondylosis Secondary to C4-C5, C5-C6; Disc Protrusion; Rule Out Ischemic Heart Disease" and recommended that he undergo the following procedures: "Dobutamine Stress Echocardiogram Arthroscopic Surgery, Acromioclavicular Joint Debridement, Subacrominal Decompression Cuff Repair using Double Row 3-4 anchors, Biceps Tenodesis using 1-2 anchors".

In a "private and confidential" correspondence dated 23 December 2013 to Capt. Desabille, head of the crew operations, the company-designated physician reported that Turallo had undergone a C4-C5, C5-C6 Discectomy Fusion with PEEK Prevail on 19 December 2013, and that the specialist opined that the estimated length of treatment after surgery is three (3) months of rehabilitation for strengthening and mobilization exercise. The letter further stated that based on Turallo's condition at that time, if the latter is entitled to disability, the closest interim assessments are Grade 8 (shoulder)- ankylosis of one shoulder and Grade 10 (neck)"- moderate stiffness or 2/3 loss of motion in neck.

³ Id. at 33.



In another correspondence of same date addressed to Capt. Desabille, the company-designated physician noted Turallo's condition and stated the treatment and processes that the latter has undergone and further noted that Turallo was in stable condition, he was advised to continue physical therapy on out-patient basis and was prescribed seven (7) different take home medications.

On 10 January 2014, the company-designated physician certified that Turallo was undergoing medical/surgical treatment from 25 September 2013 up to the said date.

Despite Turallo's continuous rehabilitation treatment, pain in his left shoulder persisted, hence, he followed up his pending surgery therefor several times to no avail. This prompted Turallo to seek a second opinion.

On 13 May 2014, Turallo consulted with Dr. Manuel Fidel Magtira, a government physician of the Vizcarra Diagnostic Center who, after x-ray of his left wrist and shoulder joints, found him to be "partially and permanently disabled with separate impediments for the different affected parts of (his) body of Grade 8, Grade 10 and Grade 11, based on the POEA contract" but declared him as "permanently unfit in any capacity for further sea duties".

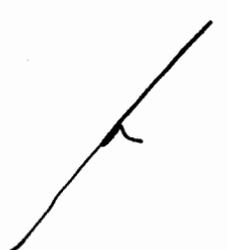
On 23 May and 2 June 2014, grievance proceedings were held between the parties at the AMOSUP, where the petitioners offered the amount of Thirty Thousand Two Hundred Thirty One US Dollars (US\$30,231.00) corresponding to a Grade 8 disability compensation based on the maximum amount of Ninety Thousand US Dollars (US\$90,000.00). Turallo, however proposed the settlement amount of Sixty Thousand US Dollars (US\$60,000.00). The parties failed to reach an agreement.

Turallo then filed a Notice to Arbitrate with the National Conciliation and Mediation Board. At this point, petitioners increased their offer from Thirty Thousand Two Hundred Thirty One US Dollars (US\$30,231.00) to Fifty Thousand US Dollars (US\$50,000.00) plus allowances for further medical treatments and expenses. Turallo, however still refused to accept such amount.

Despite efforts to arrive at an agreement, the parties failed to settle their differences, hence, they were directed to submit their pleadings and evidence for the resolution of the issues before the panel of arbitrators.

On 27 May 2015, the Panel rendered its assailed Decision, disposing, thus:

"WHEREFORE, judgment is hereby rendered ordering [petitioners], jointly and severally, to pay complainant the following amounts:

1. Disability compensation in the amount of US\$90,000.00, to be paid in the equivalent peso amount at the rate prevailing at the time of payment.
 2. Sickness Allowance in the amount of US\$3,084.54 to be paid in its peso equivalent as in number 1; and
- 

3. Attorney's fees equivalent to ten percent (10%) of the total monetary award.

Finally, legal interests shall be imposed on the monetary awards herein granted at the rate of 6% per annum from finality of this judgment until fully paid.

SO ORDERED.”

In its 16 September 2015 Resolution, the Panel denied petitioners' motion for reconsideration, thus:

“WHEREFORE, the Decision and Award dated 27 May 2015 stays.

SO ORDERED.”⁴

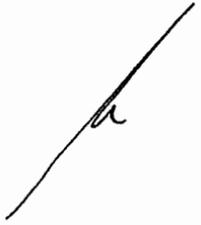
The Ruling of the CA

In assailing the Panel of Arbitrator's decision, Hoegh Fleet argued that the Panel erred in ruling that Turallo is entitled to total and permanent disability benefits, finding that he was not issued a final disability grade. It averred that the final assessment of Grade 8 disability was given by the company-designated physician but was not attached to their Position Paper before the Panel, hence, it was not considered. It also questioned the award of attorney's fees for being unwarranted as there was no showing of an unjustified act or evident bad faith on its part for denying Turallo's claim.

The CA found no cogent reason to reverse the findings of the Panel. It explained that the employment of seafarers and its incidents, including claims for death benefits, are governed by the contracts they sign every time they are hired or rehired. Also, while the seafarers and their employees are governed by their mutual agreements, the Philippine Overseas Employment Agency (POEA) rules and regulations require the POEA-Standard Employment Contract (SEC), which contains the standard terms and conditions of the seafarer's employment in ocean-going vessels, be integrated in every seafarer's contract. Entitlement, thus, to disability benefits by seamen is a matter governed not only by medical findings but by law and contract.

In saying that the Panel correctly considered Turallo as totally and permanently disabled, it referred to Section 32 of the POEA-SEC which states that a seafarer shall be deemed totally and permanently disabled if the company-designated physician fails to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 to 240 days. The CA was not persuaded with Hoegh Fleet's allegation that its company-designated physician actually issued a final assessment, invoking the document signed by its orthopedic and spinal surgery specialist dated 29 January 2014 as Turallo is still undergoing surgery during this period.

⁴ Id. at 24-27.



Even assuming that the company-designated physician's disability rating was actually given and considered definitive, the CA ruled that Turallo would still have a cause of action for total and permanent disability compensation as he remained incapacitated to perform his usual sea duties after the lapse of 120 or 240 days, such being the period for the company-designated physician to issue a declaration of his fitness to engage in sea duty.

Finally, with regard to the award of attorney's fees, while the CA did not dispute Turallo's entitlement to the same, it ruled that reducing the amount from ten percent (10%) of the total monetary award to just One Thousand US Dollars (US\$1,000.00) would be reasonable. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the assailed Decision dated 27 May 2015 and Resolution dated 16 September 2015 of the Panel of Voluntary Arbitrators composed of AVA Orlalyn Suarez-Fetesio, AVA Generoso Mamaril and AVA Jaime Montealegre in Case No. AC-949-RCMB-NCR-MVA-075-06-08-2014 are hereby AFFIRMED with MODIFICATION only as to the award of attorney's fees, herein reduced to One Thousand Dollars (US\$1,000.00).

SO ORDERED.⁵

The Motion for Reconsideration was denied in a Resolution⁶ dated March 8, 2017. From the CA ruling, Hoegh Fleet and Turallo filed separate petitions for review on *certiorari*, which were consolidated by the Court through its April 24, 2016 Resolution.⁷

The Issue

In G.R. No. 230481, Hoegh Fleet questioned Turallo's claim for total and permanent disability benefits. It raised that its company-designated physician issued a final disability assessment of Grade 8 well within the 240-day period. Thus, Turallo's compensation should only be confined to the amount corresponding to the Grade 8 assessment, a partial disability.⁸

Meanwhile in G.R. No. 230500, Turallo questioned the award of US\$1,000.00 attorney's fees for being wanting in any factual and legal justification. He furthered that the judgment of the Panel of Voluntary Arbitrators awarding him 10% of the total monetary award should be reinstated as it is in accord with prevailing jurisprudence.⁹

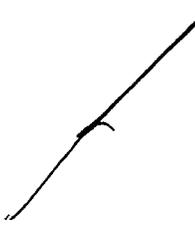
⁵ Id. at 33.

⁶ *Rollo* (G.R. Nos. 230500), p. 176.

⁷ *Rollo* (G.R. Nos. 230481), p. 75-76.

⁸ Id. at 14.

⁹ *Rollo* (G.R. Nos. 230500), p. 23.



The Ruling of the Court

The petitions are unmeritorious.

The POEA-SEC governs. Under Section 32 thereof, Turallo is entitled to a total and permanent disability compensation

In *Kestrel Shipping Co., Inc. v. Munar*,¹⁰ the Court reads Section 32 of POEA-SEC in harmony with the Labor Code and explained, viz:

Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.

Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.¹¹ (emphasis ours)

It cannot be any clearer that the company-designated physician's failure to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods would hold the seafarer's disability total and permanent.

The Court does not wish to disturb the factual findings of the Panel and the CA that indeed the company-designated physician failed to issue a final assessment of Turallo's disability grading as this Court is not a trier of facts.¹² Hence, under the contemplation of the law abovementioned, Turallo is considered as totally and permanently disabled. The Panel, as affirmed by the CA, is correct in concluding that the Grade 8 disability grading given, as reflected in the 23 December 2013 correspondence, cannot be considered as

¹⁰ G.R. No. 198501, January 30, 2013, 689 SCRA 795.

¹¹ Id. at 809-810.

¹² *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, 458.

a final assessment as the said letter expressly states that it was merely an “interim” assessment. In *Fil-Star Maritime Corporation v. Rosete*¹³ and *Tamin v. Magsaysay Maritime Corporation*,¹⁴ We concluded that the company-designated doctor's certification issued within the prescribed periods must be a final and definite assessment of the seafarer's fitness to work or disability, not merely interim, as in this case. Thus, the award of US\$90,000, as the maximum disability compensation stipulated in their Collective Bargaining Agreement (CBA)¹⁵ is warranted.

***Article 111 of the Labor Code
fixes the limit on the amount
of attorney's fees a party may
recover***

The Court agrees with the CA that attorney's fees should be reduced, not to US\$1,000.00, however, but to five percent (5%) of the total monetary award.

Article 111 of the Labor Code indeed provides that the culpable party may be assessed attorney's fees equivalent to 10 percent of the amount of wages recovered. It also provides that it shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed 10 percent of the amount of wages recovered. Section 8, Rule VIII, Book III of the Implementing Rules of the Labor Code sustains the same and states that attorney's fees shall not exceed 10 percent of the amount awarded.¹⁶ A closer reading of these provisions, however, would lead us to the conclusion that the 10 percent only serves as the maximum of the award that may be granted.¹⁷ Relevantly, We have ruled in the case of *Taganas v. National Labor Relations Commission*¹⁸ that *Article 111 does not even prevent the NLRC from fixing an amount lower than the ten percent ceiling prescribed by the article when the circumstances warrant it*. With that, the Court is not tied to award 10 percent attorney's fees to the winning party, as what Turallo wishes to imply.

Despite this, We deem it more reasonable to grant five percent (5%) of the total monetary award as attorney's fees to Turallo, instead of the US\$1,000.00 awarded by the CA.

In *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*,¹⁹ the Court discussed that there are two commonly accepted

¹³ G.R. No. 192686, November 23, 2011, 661 SCRA 247.

¹⁴ G.R. No. 220608, August 31, 2016.

¹⁵ *Rollo* (G.R. Nos. 230500), p. 59.

¹⁶ *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 220.

¹⁷ *Traders Royal Bank Employees Union-Independent v. NLRC*, G.R. No. 120592, March 14, 1997, 269 SCRA 733, 751.

¹⁸ G.R. No. 118746, September 7, 1995, 248 SCRA 133, 138.

¹⁹ G.R. No. 153031, December 14, 2006, 511 SCRA 44, 64-65.

concepts of attorney's fees, the so-called ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are those enumerated in Article 2208 of the Civil Code, specifically par. 7 thereof which pertains to actions for recovery of wages, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof. The extraordinary concept of attorney's fees is the one contemplated in Article 111 of the Labor Code. This is awarded by the court to the successful party to be paid by the losing party as indemnity for damages sustained by the former in prosecuting, through counsel, his cause in court.²⁰

Clearly, Turallo incurred legal expenses after he was forced to file an action to recover his disability benefits. Considering that he was constrained to litigate with counsel in all the stages of this proceeding, and keeping in mind the liberal and compassionate spirit of the Labor Code, where the employees' welfare is the paramount consideration,²¹ this Court considers five percent (5%) of the total monetary award as more appropriate and commensurate under the circumstances of this petition.

WHEREFORE, the instant petitions are hereby **DENIED**. The November 8, 2016 Decision and March 8, 2017 Resolution issued by the Court of Appeals are hereby **AFFIRMED WITH MODIFICATION** that the attorney's fees to be awarded to Turallo is increased to five (5) percent of the total monetary award to him.

SO ORDERED.

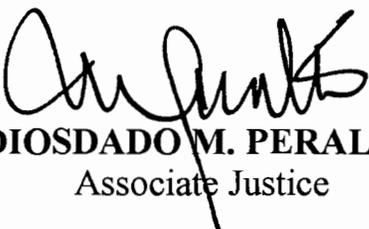


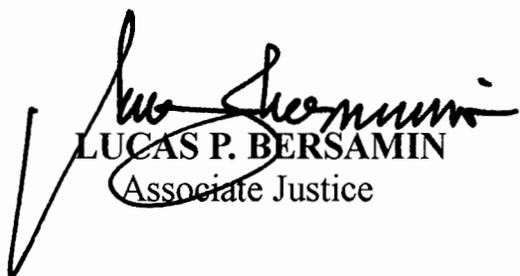
PRESBITERO J. VELASCO, JR.
Associate Justice

²⁰ *Rosario, Jr. v. De Guzman*, G.R. No. 191247, July 10, 2013, 701 SCRA 78, 85.

²¹ Article 4, LABOR CODE OF THE PHILIPPINES.

WE CONCUR:


DIOSDADO M. PERALTA
 Associate Justice


LUCAS P. BERSAMIN
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice


ANDRÉS REYES, JR.
 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.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 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 Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY


MICHAEL DOMINGO C. BATTUNG III
 Deputy Division Clerk of Court
 Third Division
 AUG 17 2017


MARIA LOURDES P. A. SERENO
 Chief Justice