Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

HENRY DIONIO,
Petitioner,

- versus -

TRANS-GLOBAL MARITIME AGENCY, INC., GOODWOOD SHIPMANAGEMENT PTE LTD., AND MICHAEL ESTANIEL,
Respondents.

G.R. No. 217362

Present:

PERALTA, *J.*, *Chairperson,*
LEONEN,
GESMUNDO,*
REYES, J. JR., and
HERNANDO,* *JJ.*

Promulgated:

November 19, 2018

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DECISION

REYES, J. JR., *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated September 25, 2014 and Resolution[2] dated March 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129223, which reversed and set aside the Decision dated November 29, 2012 and Resolution dated January 22, 2013 of the National Labor Relations Commission (NLRC) and reinstated the Decision dated August 29, 2012 of the Labor Arbiter (LA) in NLRC NCR Case (M) 11-16849-11.

Antecedents

Henry Dionio (Dionio) was engaged by Trans-Global Maritime Agency, Inc. (Trans-Global) as Bosun on board the vessel M/T "Samco Asia" for and in behalf of Goodwood Shipmanagement, PTE, Ltd.

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* On wellness leave.

1 Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Romeo F. Barza; *rollo*, pp. 13-25.

2 Id. at 27-28.

(Goodwood). His Contract of Employment with Trans-Global provided that he shall earn a basic monthly salary of US$730.00.

He embarked on February 2, 2011. On February 25, 2011, Dionio experienced dizziness, slurred speech, chest pain, difficulty in breathing, repeated vomiting and minor loss of strength in his right hand. He was brought to a hospital in Cape Town, South Africa on March 7, 2011 where he was diagnosed with a "possible transient Ischaemic Attack/Labyrinthitis." On March 8, 2011, he was repatriated to the Philippines and was referred to the Metropolitan Medical Center (MMC) for further evaluation and treatment.

The initial evaluation conducted on March 9, 2011 considered "Transient Ischemic Attack." He was later referred to a neurologist and an ear, nose and throat specialist. He received medical attention and treatment as reflected in Medical Reports dated March 28, April 18, 20, 27, May 10, 18, June 8, 9, and September 5, 2011 issued by Dr. Frances Hao-Quan. Dionio's last diagnosis was "Bilateral Cerebellar Infarct" with a disability grading of 10.

On November 10, 2011, Dionio filed a complaint against Trans-Global, Goodwood and Michael Estaniel (hereafter "respondents") for permanent disability benefits, as well as actual, moral and exemplary damages, plus attorney's fees.

On March 14, 2012, Dionio consulted Dr. Antonio Pascual of the Philippine Heart Center who diagnosed him with "S/P Cerebrovascular Disease, Bilateral Cerebellar Infarct" and concluded that he was medically unfit to work as seaman.

Dionio also consulted Dr. Enrique Puentespina of The Lord's Hospital in Calvario, Meycauayan, Bulacan whose undated neurological assessment stated that Dionio had "Vertebro Bassilar Insufficiency."[3]

LA Ruling

On August 29, 2012, the LA ordered respondents to jointly and severally pay Dionio US$10,075.00 representing disability benefits based on a grade 10 disability rating. The claims for actual, moral and exemplary damages as well as attorney's fees were denied for lack of basis.[4]

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3 CA Decision; *rollo*, pp. 14-16.
4 Id. at 15.

NLRC Ruling

Dionio elevated the case to the NLRC on appeal, which rendered its Decision on November 29, 2012, reversing the LA and awarding total and permanent disability benefits in the amount of US$89,100.00, plus attorney's fees equivalent to 10% of the monetary award.

The NLRC held that: (1) permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform; (2) Dionio's work as "bosun" was at risk because of the probability of another stroke; (3) the two medical reports issued by authority and under note of the Medical Coordinator of MMC opine that the prognosis to return to sea duties is guarded due to risk of another cerebrovascular event; (4) there was inconsistency in the disability grading and the detailed medical assessment of complainant's attending physicians; (5) Dionio is rendered unable to fully perform his job because the strenuous effort required by the nature of his work could trigger another cerebrovascular attack; (6) the disability grading is not reflective of Dionio's actual physical condition; and (7) there is no mention whether or not they are adopting the grading of 10. According to the NLRC, respondents' failure to issue an assessment grading before the 120-day period meant that the disability is permanent and total.

Respondents filed a Motion for Reconsideration which was denied by the NLRC on January 22, 2013.[5]

CA Ruling

Dissatisfied, respondents Trans-Global/Goodwood filed a Petition for *Certiorari* with the CA asserting that the NLRC erred in reversing the LA and in giving weight to the findings of Dionio's doctors. Respondents claimed that the findings of the company doctor as to the extent and severity of the seafarer's disability must be sustained.[6]

On September 25, 2014, the CA rendered its Decision:

> WHEREFORE, the petition is GRANTED. The Decision dated November 29, 2012 and the Resolution dated January 22, 2013 of the Second Division of the National Labor Relations Commission in LAC No. 09-000797-12 are REVERSED and SET ASIDE. The August 29, 2012 Decision of the Labor Arbiter in NLRC NCR Case (M) 11-16849-11 is REINSTATED.
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> SO ORDERED.[7]

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5 Id. at 16.
6 Id. at 17.
7 Id. at 24.

Dionio filed a Motion for Reconsideration which was denied by the CA on March 5, 2015.[8]

Issues before the Court

Dionio is now before the Court raising the issues of:

1. Whether or not the Honorable Court of Appeals erred in ruling that petitioner [failed] to appoint a third physician to resolve the conflicting opinions of the company-designated physician and his doctor's second opinion's [sic] disability assessment?

2. Whether or not the Honorable Court of Appeals erred in affirming the self-serving and fraudulent assessment of the company-designated physician of grade 10 even if the said physician expressly prohibits petitioner from resuming further sea service due to risk of cerebrovascular attack?

3. Whether or not the Honorable Court of Appeals erred in applying the law on permanent and total disability cited under Articles 191-193 of the Labor Code, as amended?

4. Whether or not the Honorable Court of Appeals erred in misapplying the CBA to accident resulting to disability even if the existing CBA also covers work-related illness resulting to disability?

5. Whether or not the Honorable Court of Appeals erred in deleting the award of attorney's fees even if respondents committed gross negligence, which is tantamount to bad faith when they failed to accord petitioner of immediate medical intervention on 25 February 2011 and waited until 07 March 2011 when he totally sustained stroke that resulted to permanent and total disability?[9]

Dionio argues that the CA erred in ruling that it is mandatory to appoint a third physician to resolve a conflict of findings between the company-designated physician and the doctor chosen by the seafarer. According to Dionio, the assessment of a company-designated physician may be disputed by the opinion of a physician chosen by the seafarer. The option of engaging the opinion of a third doctor is merely directory and not mandatory.[10]

He adds that the CA erred in setting aside the opinion of the company-designated doctor who stated that he was expressly prohibited to return to work. The company doctor noted that he needed "regular medical check-ups and [should] continue his medications to probably prevent another stroke

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8 Id. at 27-28.
9 Id. at 47.
10 Id. at 49-50.

episode." The company doctor further said that "prognosis to return to sea duties is guarded due to risk of another cerebrovascular event."[11]

Dionio cites the Philippine Overseas Employment Agency's (POEA) Contract which recognizes the prerogative of a seafarer to request a second opinion and consult a physician of his choice. In this case, Dionio's chosen doctor, Dr. Pascual, found him "medically unfit to work in any capacity as a seaman." Following the Department of Health's Medical Guidelines, Administrative Order No. 2007-005, July 27, 2007, Dionio is automatically disqualified to resume further sea service as he is permanently unfit for work at sea.[12]

Dionio argues that the Resolutions of the CA are contrary to the test of permanent total disability, which is the disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do. He failed to be gainfully employed from February 25, 2011 until November 9, 2011, based on his "convalescing or recuperation period" as certified by the company-designated physician in a Medical Certificate dated October 5, 2011 which was submitted before the Social Security System (SSS). There were 257 days from the onset of his illness on February 25, 2011 up to November 9, 2011. Thus, following the rulings in *Vergara v. Hammonia Maritime Services, Inc.*[13] and *Kestrel Shipping Co., Inc. v. Munar,*[14] his disability assessment of partial disability of grade 10 was converted or made permanent after the lapse of 240 days.

Dionio also assails the CA's finding that the Collective Bargaining Agreement (CBA) is applicable only to accidents resulting to disability despite the fact that it also expressly provides for permanent disability as a result of work-related illness. He, likewise, questions the deletion of attorney's fees in his favor, given that he was compelled to litigate and incur expenses to protect his interests under the law.[15]

In their Comment, respondents maintain that the CA correctly ruled that the company doctor is the one who is tasked with the determination of a seafarer's disability or fitness. Dionio filed a complaint even before seeking a second opinion, thus, he contested the findings of the company doctor even without any substantial basis. The report of Dionio's doctor was also based on a one-time examination as opposed to the company doctor who treated him for six months.[16]

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11 Id. at 50.
12 Id. at 52.
13 588 Phil. 895 (2008).
14 702 Phil. 717 (2013).
15 *Rollo*, p. 60.
16 Id. at 71.

Respondents further contend that contrary to petitioner's assertion, a seafarer is not entitled to disability benefits if he did not comply with the procedure on appointment of a third doctor under the employment contract. The CA ruled that in the POEA Contract, as well as the CBA of the parties, it is the company-designated doctor who is mandated to determine the degree of disability or fitness to work of a seafarer. As held in *OSG Shipmanagement Manila, Inc. v. Pellazar,*[17] since the seafarer was responsible for the non-referral to a third doctor, with his failure to inform the manning agency that he would be consulting his own doctor, he should suffer the consequences of the absence of a binding third opinion, and the disability assessment issued by the company-designated doctors should be upheld against the seafarer's physician of choice.[18]

Respondents argue that supposing the CBA is indeed applicable in this case, based on Sec. 20.1.4 thereof, the seafarer must be certified permanently unfit for further sea service in any capacity by the company doctor for the medical unfitness clause to apply. They also assert that mere inability to work does not justify total and permanent disability compensation.[19]

The Court's Ruling

The petition has merit.

It is settled that the company-designated physician will have the first opportunity to examine the seafarer and, thereafter, issue a certification as to the seafarer's medical status. On the basis of the said certification, seafarers would be initially informed if they are entitled to disability benefits. The seafarers, however, are not precluded from challenging the diagnosis of the company-designated physicians should they disagree with such findings. They have the option to seek another opinion from a physician of their choice and, in case the latter's findings differ from that of the company-designated physician, the conflicting findings shall be submitted to a third-party doctor, as mutually agreed upon by the parties.[20]

Following Sec. 20(A) of the POEA-Standard Employment Contract (POEA-SEC), as revised, should the seafarer's appointed doctor disagree with the assessment, a third doctor may be agreed upon by the employer and the seafarer. The latter's decision shall be final and binding between the parties.

When there is conflict between the findings of the company-designated doctor and the doctor chosen by the seafarer, the latter is bound

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17 740 Phil. 638, 651-652 (2014).
18 *Rollo*, p. 77.
19 Id. at 82, 87.
20 *Magsaysay Mitsui Osk Marine, Inc. v. Buenaventura,* G.R. No. 195878, January 10, 2018.

to initiate the process of referring the findings to a third-party physician by informing his employer.[21] The referral to a third doctor has been held by the Court to be a mandatory procedure as a consequence of the provision in the POEA-SEC that the company-designated doctor's assessment should prevail in case of non-observance of the third-doctor referral provision in the contract.[22]

Failure to comply with the requirement of referral to a third-party physician is tantamount to violation of the terms under the POEA-SEC, and without a binding third-party opinion, the findings of the company-designated physician shall prevail over the assessment made by the seafarer's doctor.[23]

It should be clarified, however, that the failure to refer the conflicting findings to a third doctor does not *ipso facto* render the conclusions of the company-designated physician conclusive and binding on the courts. As explained in *CF Sharp Crew Management, Inc. v. Castillo*:[24]

> Based on jurisprudence, the findings of the company-designated physician prevail in cases where the seafarer did not observe the third-doctor referral provision in the POEA-SEC. However, if the findings of the company-designated physician are clearly biased in favor of the employer, then courts may give greater weight to the findings of the seafarer's personal physician. Clear bias on the part of the company-designated physician may be shown if there is no scientific relation between the diagnosis and the symptoms felt by the seafarer, or if the final assessment of the company-designated physician is not supported by the medical records of the seafarer.[25]

Thus, while failure to refer the conflicting findings between the company-designated physician and the seafarer's physician of choice gives the former's medical opinion more weight and probative value over the latter, still, it does not mean that the courts are bound by such doctor's findings, as the court may set aside the same if it is shown that the findings of the company-designated doctor have no scientific basis or are not supported by medical records of the seafarer.[26]

Indeed, the rule that the company-designated doctor's findings shall prevail in case of non-referral of the case to a third doctor is not a hard-and-fast rule as labor tribunals and the courts are not bound by the medical findings of the company-doctor. Instead, the inherent merits of the respective medical findings shall be considered.[27]

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21 Id.
22 *Ilustricimo v. NYK-Fil Ship Management, Inc.*, G.R. No. 237487, June 27, 2018.
23 Id.
24 G.R. No. 208215, April 19, 2017.
25 Id.
26 *Magsaysay Mitsui Osk Marine, Inc. v. Buenaventura*, supra note 20.
27 *Ilustricimo v. NYK-Fil Ship Management, Inc.*, supra note 22.

Here, Dionio was treated by the company-designated doctor from March 9, 2011 to September 5, 2011. On June 9, 2011, that is before the lapse of the 120-day period, the company doctor issued a Medical Report.

As noted by the CA in its Decision:

> On June 9, 2011, the company-designated physician issued a Medical Report, which states that **"The specialist opines that prognosis for return to sea duties is guarded due to risk of another cerebrovascular event."** The attached comment of the internist-neurologist states, **"Suggested disability grading is Grade 10** – slight brain functional disturbance that requires little attendance or aid and which interferes to a slight degree with the working capacity of the patient."[28] (Emphasis supplied)

Thus, while the company-designated physician suggested a disability grading of "Grade 10," the company-doctor also opined "that prognosis for return to sea duties is guarded to risk of another cerebrovascular event."[29]

Dionio also cited the Medical Certificate dated October 5, 2011 issued by the company-designated physician and submitted to the SSS, which gave a final diagnosis of "Bilateral Cerebellar Infarct." It also stated that the convalescing or recuperation period shall be from March 9 to November 9, 2011.[30]

Dionio's allegation that he was unable to work for 257 days is uncontroverted as respondents merely argued that it is immaterial whether or not a seafarer actually returned to work within 120 days or even 240 days, since he was already assessed with Grade 10 disability on June 9, 2010 which was within the 120-day period.[31]

Again, while much weight is given to the company-doctor's assessment, in view of the seafarer's failure to initiate the referral to a third doctor, the Court is not bound to accept, in its entirety, the company doctor's findings, where the circumstances surrounding the fit-to-work assessment show otherwise.

It is the avowed policy of the State to give maximum aid and full protection to labor. Thus, the Court has applied the Labor Code concept of disability to Filipino seafarers. Case law has held that "the notion of 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

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28 *Rollo*, pp. 20-21.
29 Id. at 20.
30 Id. at 35.
31 Id. at 87-88.

the impairment of his earning capacity. Thus, disability has been construed less on its medical significance but more on the loss of earning capacity."[32]

It has been held that there is total disability when the employee is unable to earn wages in the same kind of work or work of similar nature that he or she was trained for, or accustomed to perform, or any kind of work which a person of his or her mentality and attainments could do. Meanwhile, there is permanent disability when the worker is unable to perform his or her job for more than 120 or 240 days, as the case may be, regardless of whether or not he loses the use of any part of his or her body.[33]

In this case, while much weight is given to the company-designated doctor's findings, as a result of Dionio's failure to initiate the referral to a third doctor, an assessment of the medical certificate issued by the company doctor itself shows that Dionio's claim for permanent and total disability is in order.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 25, 2014 and Resolution dated March 5, 2015 of the Court of Appeals in CA-G.R. SP No. 129223 are **REVERSED** and **SET ASIDE**. The Decision dated November 29, 2012 and Resolution dated January 22, 2013 of the National Labor Relations Commission in LAC No. 09-000797-12 are **REINSTATED.**

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

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32 *Ilustricimo v. NYK-Fil Ship Management, Inc.*, supra note 22.
33 *Abosta Shipmanagement Corp. v. Delos Reyes*, G.R. No. 215111, June 20, 2018.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

(On Wellness Leave)
ALEXANDER G. GESMUNDO
Associate Justice

(On Wellness Leave)
RAMON PAUL L. HERNANDO
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.

DIOSDADO M. PERALTA
Associate Justice
Chairperson, 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 Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)

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Division Clerk of Court
Third Division
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