Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RAMON R. MAGADIA,
Petitioner,

- versus -

ELBURG SHIPMANAGEMENT PHILIPPINES, INC. AND ENTERPRISES SHIPPING AGENCY SRL,
Respondents.

G.R. No. 246497

Members:

PERALTA, ***C.J.,*** *Chairperson*
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
INTING,* ***JJ.***

Promulgated:
DEC 05 2019

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] seeks to set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 146244,[2] *viz.*:

1. Decision[3] dated May 23, 2018, finding petitioner entitled to partial disability benefits; and

2. Resolution[4] dated March 6, 2019, denying petitioner's motion for reconsideration.

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* Additional member per Special Order No. 2726.
1 Under Rule 45 of the 1997 Rules of Court.
2 Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Ricardo R. Rosario and Ronaldo Roberto B. Martin.
3 *Rollo*, pp. 41-52.
4 *Id.* at 36-40

The Antecedents

Petitioner Ramon Magadia filed a complaint against respondents Elburg Shipmanagement Philippines, Inc. and Enterprises Shipping Agency SRL for permanent and total disability benefits and other monetary claims.

Petitioner's Version

On September 20, 2013, respondents hired him as messman to work on board MV FD Honorable for a period of nine (9) months. On May 19, 2014, he was carrying a garbage bag to the ship's upper deck when he fell from the stairway. His shoulder hit the steel railings and his body rammed against the floor. He was immediately administered first aid and brought to a hospital in Rio de Janeiro. He had an x-ray on his spine and pelvis and got diagnosed with "Herniated Nucleus Pulposus, Lumbosacral Vertebrae."[5]

On May 23, 2014, he got repatriated to Manila and reported to the company-designated physician for examination and treatment. After undergoing a magnetic resonance imaging (MRI) test, company-designated physician Dr. William Chuasuan, Jr. diagnosed him with "L4-L5 and L5-S1 Disc Dessication; Left Forearm Contusion." He was recommended for physical therapy. [6]

On September 24, 2014, the company-designated physician issued petitioner an initial disability grading of 11 after he found that petitioner's trunk was "within [functional range]." [7]

After further medical treatment, the company-designated physician issued Medical Report dated October 3, 2014, *viz.*:

> The specialist opines that patient has already reached maximum medical treatment.
>
> If (the) patient is entitled to disability, his final disability grading is Grade 11 – loss of 1/3 lifting power of the trunk.[8]

Petitioner, thereafter, continued with his treatment and therapy. On January 6, 2015, the company-designated physician assessed his condition as resolved and stopped his treatment. His back pain, however, persisted. Thus, the next day, he sought the opinion of another physician, Dr. Misael Jonathan A. Ticman.[9]

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5 *Id.* p. 42.
6 *Id.* at 43.
7 *Id.* at 45-46.
8 *Id.* at 15.
9 *Id.* at 43.

In his Disability Report dated February 4, 2015, Dr. Ticman found:

> x x x [I]n spite of the physical therapy done and medications given(,) the symptoms [persisted and] prognosis is not good. I am therefore recommending Permanent Disability and that he is unfit to work as a seaman in any capacity."[10]

Consequently, he demanded from respondents payment of full disability benefits, but to no avail.[11]

Respondent's Version

After a series of examination and rehabilitation, the company-designated physician assessed petitioner's disability as Grade 11 due to "loss of 1/3 lifting power of the trunk." Petitioner was, therefore, only entitled to partial permanent disability benefits equivalent to the company-designated physician's assessment. Too, the company-designated physician's assessment should be given more weight over petitioner's personal doctor since the latter failed to observe the proper procedure by referring the matter to a third doctor.[12]

The Labor Arbiter's Ruling

In his Decision, Labor Arbiter Eduardo DJ. Carpio granted petitioner's claim for permanent and total disability benefits, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered ORDERING the respondents to pay, jointly and severally, herein complainant the amount of US$60,000.00 representing his permanent total disability compensation and attorney's fees equivalent to ten percent (10%) of the total monetary award or their peso equivalent at the prevailing exchange rate on the actual date of payment.
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> All other claims are dismissed for lack of factual or legal basis.[13]

The NLRC Ruling

On appeal, the NLRC modified. It declared that petitioner was only entitled to partial disability benefits, *viz.*:

> WHEREFORE, premises considered, the Appeal is GRANTED and the July 17, 2015 Decision is MODIFIED in that complainant is declared to be partially disabled only with a disability rating of Grade 11.

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10 *Id.*
11 *Id.*
12 *Id.* at 43-44.
13 *Id.* at 44, Court of Appeals' Decision.

> Respondents are ordered to solidarily pay complainant the compensation corresponding to Grade 11 disability, to be paid in Philippine peso at the exchange rate prevailing at the time of payment and 10% thereof as attorney's fees.[14]
>
> x x x x x x x x x

Petitioner sought a reconsideration but the same was denied.[15]

The Court of Appeals' Ruling

On petitioner's appeal by certiorari, the Court of Appeals affirmed. In addition, it imposed a legal interest of six (6%) per annum on the amount awarded from the date of finality of the decision until it was fully paid. The Court of Appeals ruled that the company-designated physician issued a final assessment of petitioner's condition on October 3, 2014 or 133 days since he got repatriated and found his illness equivalent to a disability grading of 11. Since there was a final assessment of petitioner's condition within the 120/240-day period, the company-designated physician's finding was controlling.[16]

By Resolution dated March 6, 2019, petitioner's motion for reconsideration was denied.[17]

The Present Petition

Petitioner now asks the Court to reverse the Court of Appeals' assailed dispositions. He maintains that the company-designated physician failed to make a final assessment of his illness within the 120/240 window. The law, thus, presumes that his disability had become permanent and total. But even arguing that a final and definite assessment was made within the prescribed period, he was still unable to return for sea duty after his illness. Thus, he should be deemed permanently and totally disabled.

For their part, respondents counter that the company-designated physician issued Medical Report dated October 3, 2014, finding petitioner's illness equivalent to Grade 11. The assessment was issued within 240 days from the time he got repatriated, thus, the same negates petitioner's claim for permanent total disability compensation. Besides, disability benefits are not dependent on the loss of a seafarer's earning capacity but on the degree of illness suffered.

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[14] *Id.* at 44-45.
[15] *Id.* at 45.
[16] *Id.* at 41-52.
[17] *Id.* at 36-40.

Core Issue

Is petitioner entitled to permanent total disability benefits?

Ruling

Orient Hope Agencies, Inc. v. Jara[18] set out the following guidelines to determine a seafarer's disability, *viz.*:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
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> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
>
> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[19]

Based thereon, two (2) requisites must concur for a determination of a seafarer's medical condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive. Thus, ***Orient Hope*** aptly held:

> While the assessment of a company-designated physician *vis-á-vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law. x x x[20]

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[18] G.R. No. 204307, June 6, 2018, citing *Elburg Shipmanagement Phils., Inc. v. Quiogue*, 765 Phil. 341, 362-363 (2015).

[19] G.R. No. 204307, June 6, 2018.

[20] *Id.*

Here, petitioner was repatriated on May 23, 2014. After undergoing medical treatment, the company-designated physician issued an interim Grade 11 disability on September 24, 2014. Petitioner's back pain persisted which required him to continue with his medical treatment. Per Medical Report dated October 3, 2014, the company-designated physician issued petitioner a final disability grading of 11, 133 days since he got evaluated. Indeed, the diagnosis was laid down within the extended period of 240 days. But the case does not stop here. The rules also require that the company-designated physician's assessment on a seafarer's illness be final and definitive.

Section 20(B) of POEA-SEC[21] provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite. A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[22]

Here, the Medical Report dated October 3, 2014 contained the following observations: "The specialist opines that [the] patient [had] already reached maximum medical treatment. If [the] patient is entitled to disability, his final disability grading is Grade 11 – loss of 1/3 lifting power of the trunk."[23]

There was nothing on record showing that the company-designated physician explained in detail the progress of petitioner's treatment and the approximate period needed for him to fully recover.[24] Instead, the medical

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[21] Section 20. COMPENSATION AND BENEFITS.

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

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.

[22] *Sunit v. OSM Maritime Services, Inc.*, 806 Phil. 505, 519 (2017).

[23] *Rollo*, p. 15.

[24] See supra note 18.

report merely stated that petitioner suffered a disability grading of 11 and that he had reached maximum medical care. Clearly, this is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician because petitioner, in fact, returned to the company-designated physician and underwent further therapy which lasted for almost more than three (3) months or until January 6, 2015.

In ***Island Overseas Transport Corp. v. Beja***, a month after his knee operation, seafarer Beja was given Grades 10 and 13 partial disability grading by the company-designated physician. The Court considered this assessment tentative because the seafarer continued his physical therapy sessions, which even went beyond 240 days. More, the company-designated physician did not explain how he arrived at the partial permanent disability assessment nor provided any justification for his conclusion.[25]

In ***Tamin v. Magsaysay Maritime Corporation***, the Court held that the company-designated physician likewise failed to give a definitive rating on petitioner's disability because the seafarer still experienced recurring pain in his left hand and was required to undergo further therapy sessions which extended beyond the 240 day window.[26]

On the strength of these judicial dicta, petitioner's disability is deemed permanent and total by operation of law in the absence of a final and definitive assessment from the company-designated physician.

Another point. We emphasize anew that in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[27] Considering petitioner's persistent back pain, it is highly improbable for him to perform his usual tasks as messman in any vessel which effectively disabled him from earning wages in the same kind of work or similar nature for which he was trained. Petitioner's disability resulted in his loss of earning capacity and, therefore, entitles him to permanent and total disability benefits.

Finally, since petitioner was compelled to litigate due to respondents' unjustified denial of his claims, the award of attorney's fees was proper.[28]

ACCORDINGLY, the petition is **GRANTED**. The Decision dated May 23, 2018 and Resolution dated March 6, 2019 of the Court of Appeals in CA G.R. SP No. 146244 are **REVERSED AND SET ASIDE**. Respondents Elburg Shipmanagement Philippines, Inc. and Enterprises Shipping Agency SRL are ordered to pay petitioner Ramon Magadia US$60,000.00 as permanent and total disability benefits and attorney's fees

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[25] 774 Phil. 332, 347 (2015).
[26] 794 Phil. 286, 301 (2016).
[27] Supra note 21, at 522.
[28] Supra note 18.

equivalent to ten percent (10%) of this amount. Legal interest of 6% per annum is imposed on the total judgment award from the finality of this Decision until fully paid.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR :

DIOSDADO M. PERALTA
Chief Justice
Chairperson – First Division

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

DIOSDADO M. PERALTA
Chief Justice