Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MICHAEL ANGELO T. LEMONCITO, Petitioner, -versus- **BSM CREW SERVICE CENTRE PHILIPPINES, INC./BERNARD SCHULTE SHIPMANAGEMENT (ISLE OF MAN LTD.),** Respondents.	**G.R. No. 247409** Present: PERALTA, C.J., *Chairperson* CAGUIOA, REYES, J.C., JR., LAZARO-JAVIER, and LOPEZ, *JJ.* Promulgated: FEB 03 2020

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D E C I S I O N

LAZARO-JAVIER, *J.:*

The Case

This Petition for Review on Certiorari[1] assails the following issuances of the Court of Appeals in CA-G.R. SP No. 153662 entitled "*BSM Crew Service Centre Philippines, Inc., et al. v. Michael Angelo T. Lemoncito.*"

[1] Under Rule 45 of the Rules of Court.

1) Decision[2] dated November 9, 2018, which dismissed petitioner Michael Angelo Lemoncito's complaint for permanent total disability benefits, sickness allowance benefit, exemplary damages, moral damages, and attorney's fees; and

2) Resolution[3] dated April 26, 2019, denying petitioner's motion for reconsideration.

Antecedents

On July 16, 2015, respondent BSM Crew Service Centre Philippines, Inc. (BSM), on behalf of its principal respondent Bernard Schulte Shipmanagement (BSS), hired petitioner Michael Angelo Lemoncito as a motor man for a duration of nine (9) months. Petitioner was covered by the collective bargaining agreement (CBA) between International Maritime Employees' Council and Associated Marine Officers' and Seamen's Union of the Philippines. After being declared fit to work, petitioner boarded MV British Ruby on July 22, 2015.[4]

While on board, petitioner complained of fever and cough productive of whitish phlegm and throat discomfort. His blood pressure reached 173/111, for which he was given medication. On February 22, 2016, he was medically repatriated. On February 26, 2016, he was referred to the Marine Medical Services under the care of company-designated doctors Percival Pangilinan and Dennis Jose Sulit. After a series of tests, he was diagnosed with lower respiratory tract infection and hypertension. He was given an interim disability assessment of Grade 12 – "*slight, residual or disorder.*" The company-designated doctors opined that petitioner's hypertension was not work-related. His hypertension had multifactorial causes: genetics, predisposition, poor lifestyle, high salt intake, smoking, diabetes mellitus and "*increased sympathetic activities.*" He was prescribed Nebilet and Twynsta and advised to return for re-evaluation.[5]

On July 1, 2016, the company-designated doctors issued their 16th and final report where they noted that petitioner had been previously cleared of his lower respiratory tract infection and that his hypertension was responding to medication.[6]

Disagreeing with conclusions of the company-designated doctors, petitioner consulted Dr. Antonio Pascual, who issued a Medical Report dated September 12, 2016. Dr. Pascual certified that petitioner had 1) Hypertensive

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[2] Penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Jane Aurora C. Lantion, and Marie Christine Azcarraga-Jacob, all members of the Special Seventh Division, *rollo*, pp. 55-70.
[3] *Id.* at 51-52.
[4] *Id.* at 56.
[5] *Id.* at 56-57.
[6] *Id.* at 57.

Heart Disease, Stage 2; and 2) Degenerative Osteoarthritis, Thoracic Spine. Consequently, Dr. Pascual declared petitioner "unfit to work as a seaman."[7]

On the basis of Dr. Pascual's certification, petitioner invoked the grievance procedure embodied in the CBA and lodged a complaint for total permanent disability benefits, sickness allowance, damages and attorney's fees before the Panel of Voluntary Arbitrators.

In support of his complaint, petitioner essentially alleged: as a motor man, he was tasked to take care of all the motors and mechanical equipment on board as well as ensure that the engines are in tiptop condition from eight (8) to sixteen (16) hours a day. This was his routine for twenty-four (24) uninterrupted years. Despite the treatment given him by the company-designated doctors, he never recovered from his debilitating illness. His condition was work-related, thus, compensable.[8]

Respondents countered, in the main: aside from his bare allegations, petitioner did not adduce substantial evidence to prove that the nature of his work contributed to his hypertension. Under the Philippine Overseas Employment Agency – Standard Employment Contract (POEA-SEC), hypertension is only compensable when it is uncontrolled with end organ damage to the kidneys, brain, heart or eyes. Besides, petitioner failed to observe the third-doctor-referral rule under the POEA-SEC when he independently consulted his physician, Dr. Pascual.[9]

Petitioner replied: If there is a conflict between the findings of the company-designated doctor and the seafarer's doctor, that which is favorable to the seafarer should be upheld. He was totally and permanently disabled considering that more than seven (7) months had passed since he failed to resume his duties as seaman.[10]

Rulings of the Panel of Voluntary Arbitrators

By Decision dated May 30, 2017, the Panel of Voluntary Arbitrators found petitioner to be totally and permanently disabled. His hypertension was presumed to be work-related. Petitioner's non-compliance with the third-doctor-referral rule should not be taken against him because the company-designated doctors failed to make a fitness assessment within the required 120-day period. Besides, records showed that petitioner was unable to obtain gainful employment during the 240-day assessment period. The panel, thus, decreed:

> **WHEREFORE**, premises considered, judgment is hereby rendered **ORDERING** the respondents to jointly and severally pay the complainant

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[7] *Id.* at 57-58.
[8] *Id.* at 58-59.
[9] *Id.* at 59.
[10] *Id.*

> the amount of NINETY[-]SIX THOUSAND NINE HUNDRED NINE U.S. DOLLARS (US$96,909.00) as his total permanent disability benefit; TWO THOUSAND FOUR HUNDRED SIXTEEN U.S. DOLLARS (US$2,416.00) as sickness allowance and attorney's fees equivalent to ten percent (10%) of the total monetary award or in their Philippine 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 merit.
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> SO ORDERED.[11]

Respondents' motion for reconsideration was, subsequently, denied through Resolution dated October 20, 2017.[12]

Proceedings before the Court of Appeals

On petition for review, respondents argued: Petitioner failed to prove by substantial evidence that his hypertension was compensable. The company-designated doctors made their final assessment well within the assessment period prescribed by the POEA-SEC. The Panel of Voluntary Arbitrators erred in disregarding the mandatory third-doctor-referral rule and giving weight to Dr. Pascual's findings. In fact, Dr. Pascual only saw petitioner once. The company-designated doctors examined petitioner for four (4) months, thus, their findings were more credible.[13]

Petitioner reechoed the arguments he raised before the Panel of Voluntary Arbitrators.[14]

By its assailed Decision[15] dated November 9, 2018, the Court of Appeals reversed. It held that the findings of the company-designated doctors were more credible and petitioner failed to prove by substantial evidence that he was totally and permanently disabled. In case of conflict between the findings of the company-designated doctors and the seafarer's doctor, the procedure embodied in the POEA-SEC should be observed. It is also up to the labor tribunals and the courts to assess which of the assessments is more credible. Since the company-designated doctors had more detailed knowledge of petitioner's condition, their assessment was more credible. Petitioner's failure to return to his employment within the 120-day period did not automatically entitle him to total and permanent disability benefits. Besides, the company-designated doctors were able to make their final assessment that petitioner was fit to work within the 240-day assessment period. The Court of Appeals further observed:

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[11] *Id.* at 60.
[12] *Id.* at 61.
[13] *Id.* at 62.
[14] *Id.*
[15] *Id.* at 55-70.

> In the case at bench, Lemoncito was medically repatriated on February 22, 2016 and was immediately referred to the company-designated physicians. He was on continuous medications and re-examination even after the lapse of the 120-day period on June 21, 2016. As a matter of fact, during Lemoncito's check-up on June 8, 2016, he was "shifted to another anti-hypertensive medication" and advised to come back on June 22, 2016 for re-evaluation. Indubitably, the 120-day period had been extended by 240 days or until October 19, 2016 because Lemoncito's condition required further medical attention. However, on July 1, 2016, the company-designated physicians issued the 16th and Final Report stating that Lemoncito is "cleared cardiac wise" and enclosing therein Dr. Pangilinan's prognosis that Lemoncito "is considered to have no significant pulmonary findings" and Dr. Sulit's declaration that he is fit to work. Clearly, the company-designated physicians did not sit idly in assessing Lemoncito's fitness to resume sea duties and made a categorical declaration before the lapse of the 240-day period. Hence, We find and so rule that the assessment of the company-designated physicians is final and binding. Consequently, Lemoncito is considered fit to work, and thus not entitled to disability benefits.[16]

The Court of Appeals ordained:

> **WHEREFORE**, the instant petition for review is hereby **GRANTED**. The May 30, 2017 Decision and October 20, 2017 Resolutions of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board in Voluntary Arbitration Case No. MVA-045-RCMB-NCR-232-14-10-2016 are **ANNULLED** and **SET ASIDE**. The complaint of [Michael] Angelo T. Lemoncito is **DISMISSED** for lack of merit.
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> SO ORDERED.[17]

Petitioner's motion for reconsideration was denied under Resolution[18] dated April 26, 2019.

The Present Petition

Petitioner now invokes this Court's discretionary appellate jurisdiction via Rule 45 of the Rules of Court to review and reverse the assailed Court of Appeals' issuances.

In his Petition[19] dated July 9, 2019, petitioner essentially alleged: his hypertension is work-related because he acquired it during his employment. His duties as motor man also contributed to his hypertension. Because of the termination of his medical treatment by the company-designated doctors, he was compelled to seek out his own doctor. The company-designated doctors failed to make a final assessment within the 120-day window prescribed by

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[16] *Id.* at 67-68.
[17] *Id.* at 69.
[18] *Id.* at 51-52.
[19] *Id.* at 10-46.

law, thus, he is deemed to be totally and permanently disabled. True, the assessment period may be extended to 240 days, but respondents were unable to present a justification for the extension. He substantially complied with the third-doctor-referral rule.

In their Comment[20] dated October 7, 2019, respondents riposte: The company-designated doctors initially made a Grade 12 interim assessment well within the mandatory 120-day assessment period. Petitioner's medication, however, was shifted to another anti-hypertension drug, and as a result, he needed to be further observed. This was the reason why the final "fit-to-work" assessment got issued beyond the 120-day period but within the 240-day extended period. Petitioner's failure to abide by the mandatory third-doctor-referral rule was fatal, thus, he was bound by the final assessment made by the company-designated doctors. Petitioner's hypertension is not compensable under the POEA-SEC, because there is no showing that it caused organ damage.

Issue

Can petitioner be declared as totally and permanently disabled by reason of his hypertension?

Ruling

We grant the petition.

After undergoing a pre-employment medical examination (PEME), petitioner was declared fit to work and was permitted to board MV British Ruby on July 22, 2015. Although a PEME is not expected to be an in-depth examination of a seafarer's health, still, it must fulfill its purpose of ascertaining a prospective seafarer's capacity for safely performing tasks at sea. Thus, if it concludes that a seafarer, even one with an existing medical condition, is "fit for sea duty," it must, on its face, be taken to mean that the seafarer is well in a position to engage in employment aboard a sea vessel without danger to his health.[21]

As it turned out though, petitioner, while on board, complained of fever and cough productive of whitish phlegm and throat discomfort. His blood pressure also reached 173/111. This all happened during his seventh month on board. On February 22, 2016, he was medically repatriated. On February 26, 2016, his treatment commenced in the hands of the company-designated doctors at Marine Medical Services. After a series of tests, he was diagnosed with lower respiratory tract infection and hypertension. He was given an

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[20] *Id.* at 72-102.

[21] *Manansala v. Marlow Navigation Phils. Inc.*, et al., 817 Phil. 84, 102-103 (2017).

interim disability rating of Grade 12, after which he underwent continuous medical treatment until July 1, 2016.

In their final Medical Report dated July 1, 2016, the company-designated doctors stated:

> This is a follow-up report of Motorman Michael Angelo T. Lemoncito who was initially seen here at Marine Medical Services on February 26, 2016 and was diagnosed to have **Lower Respiratory Tract Infection; Hypertension**.
>
> He was previously cleared by the Pulmonologist with regards to his Lower Respiratory Tract Infection.
>
> He was seen by the Cardiologist who noted his blood pressure to be adequately controlled with medications.
>
> The specialist opines that patient is now cleared cardiac wise effective as of July 1, 2016.[22]

On its face, there was no categorical statement that petitioner is fit or unfit to resume his work as a seaman. It simply stated: a) petitioner was previously cleared of his lower respiratory tract infection; b) petitioner's blood pressure is adequately controlled with medications; and c) petitioner was cleared cardiac wise as of July 1, 2016. In other words, this assessment is incomplete, nay, inconclusive. In fact, this medical report leaves more questions than answers.

For instance, the phrase "*petitioner's blood pressure is adequately controlled with medications*" is too generic and equivocal. It does not give a clear picture of the state of petitioner's health nor does it give a thorough insight into petitioner's fitness or unfitness to resume his duties as a seafarer. Do they mean that since his hypertension can now be controlled by medications he is already fit to resume his work? Or do they mean that though his hypertension can now be controlled, he still needs constant monitoring? No one knows.

Likewise, the phrase "*patient is now cleared cardiac wise*" does not provide much information. Does it mean that since he is cleared of any cardiac disease, he is already fit to work as a seafarer? Or does it mean that though he is cleared of any cardiac disease as of July 1, 2016, he still needs further monitoring? Does being cleared of any cardiac disease automatically mean petitioner has a clean bill of health? The report does not say.

Undoubtedly, the Medical Report dated July 1, 2016 is not complete and adequate, therefore, it must be ignored. ***Ampo-on v. Reinier Pacific International Shipping, Inc.***[23] explains:

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[22] *Rollo*, p. 24.
[23] G.R. No. 240614, June 10, 2019.

> Upon finding that the seafarer suffers a work-related injury or illness, the employer is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation. This period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists.
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> **The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. To be conclusive and to give proper disability benefits to the seafarer, this assessment must be complete and definite; otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored. As case law holds, 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.**
>
> **Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.**(Emphasis supplied)

To repeat, without a valid final and definitive assessment from the company-designated doctors within the 120/240-day period, as in this case, the law already steps in to consider a seafarer's disability as total and permanent.[24] By operation of law, therefore, petitioner is already totally and permanently disabled. Besides, jurisprudence grants permanent total disability compensation to seafarers, who suffered from either cardiovascular diseases or hypertension, and were under the treatment of or even issued fit-to-work certifications by company-designated doctors beyond 120 or 240 days from their repatriation.[25]

ACCORDINGLY, the petition is **GRANTED.** The assailed Decision dated November 9, 2018 and Resolution dated April 26, 2019 of the Court of Appeals in CA-G.R. SP No. 153662 are **REVERSED** and **SET ASIDE**. The Decision dated May 30, 2017 and Resolution dated October 20, 2017 of the Panel of Voluntary Arbitrators are **REINSTATED**.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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[24] *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018.
[25] *Balatero v. Senator Crewing (Manila) Inc., et al.*, 811 Phil. 589, 600 (2017).

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

MARIO V. LOPEZ
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
Chairperson, First Division