Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ADEX R. MACAHILAS,
Petitioner,

- versus -

BSM CREW SERVICE CENTRE PHILS., INC., ET AL.
Respondents.

G.R. No. 237130

Present:
LEONEN, *J.*,
Chairperson,
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:
July 1, 2020

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DECISION

CARANDANG, *J.*:

The instant petition[1] under Rule 45 of the Rules of Court assails the Decision[2] dated August 31, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146261, dismissing the complaint for payment of permanent and total disability benefits filed by petitioner Adex Macahilas (Macahilas) against respondents BSM Crew Service Centre Phils., Inc. (BSM) and its foreign employer Bernhard Schulte Shipmanagement (Deutschland) GMBH & Co. KG., and Narcissus L. Duran.

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1 *Rollo*, pp. 31-63.

2 Penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Renato C. Francisco; id. at 13-24.

Macahilas worked for BSM under several employment contracts. On August 30, 2013, Macahilas commenced his 8-month contract[3] with BSM as Third Engineer on board APL Canada. His employment was covered by a Collective Bargaining Agreement (CBA) called Verdi/ITF Berlin IMES IBI CBA.[4]

As third engineer, Macahilas worked inside the ship's engine room as he was responsible for operating and maintaining the ship's engine and other mechanical systems and equipment, such as the boilers, fuel, main and auxiliary engines, condensate and feed systems. He worked in confined vessel spaces, and was exposed to injurious and harmful chemicals, dust, fumes/emissions, and other irritant agents. Macahilas claims that his work also entailed strenuous lifting, pushing, and moving of equipment and materials on board the ship.[5]

On December 29, 2013, while on board APL Canada, Macahilas experienced abdominal pain, vomiting, and chills. Oral medications given on board did not help improve his conditions. As a result, Macahilas was referred for admission in a hospital in Mexico, where he was diagnosed with Phase IV Appendicitis. Macahilas underwent appendectomy, but his wound was infected.[6] On January 17, 2014, he was medically repatriated to the Philippines for further treatment of his wound infection. On examination, the company-designated physician opined that his appendicitis was not work-related because "in most cases [said condition] results from blockage of the appendix usually by a fecalith, causing inflammation x x x."[7] Despite said finding, Macahilas was treated for the infection with weekly follow-ups. In April 2014, his wound totally healed but after a CT-scan exam, Macahilas's incisional hernia increased in size. In December 2014, Macahilas underwent a hernia repair with mesh and was later discharged. He was advised to have follow-ups with the company-designated physician. Over a year since Macahilas's medical repatriation, or on March 12, 2015, he was declared fit to work.[8]

Macahilas complained of pricking pains in his lower abdomen area where he was operated. He went to see his personal physician, who assessed that he was unfit to resume work as seafarer, and that his illness was work-aggravated/related. With his assessment, Macahilas claimed permanent and total disability benefits from BSM. The parties failed to agree on the compensability of Macahilas's illness, which constrained him to file a labor complaint with the National Labor Relations Commission (NLRC).[9]

In a Decision[10] dated November 27, 2017, the Labor Arbiter (LA)

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3 Id. at 469-470.
4 Id. at 471-493.
5 Id. at 37
6 Id. at 207.
7 Id. at 574.
8 Id. at 72.
9 Id. at 72-73.
10 Id. at 370-386.

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awarded permanent and total disability benefits to Macahilas. The LA held that although Macahilas was immediately subjected to medical examination upon his repatriation, no final report had been issued on Macahilas's appendicitis. The assessment stating that his condition was "not work-related" was merely a private communication from the company-designated physician to BSM. There was no indication that Macahilas had been informed of this medical opinion. Since his medical repatriation, Macahilas had been under treatment for 419 days and no final assessment had been issued within the mandated 240-day period. In the course of further management of his conditions due to his appendectomy, Macahilas was also found to have incisional hernia. Macahilas's diagnosis of hernia is a listed occupational illness under the Philippine Overseas Employment Agency – Standard Employment Contract (POEA-SEC). Hence, said condition is a compensable illness. Contrary to the opinion of the company-designated physician, the LA held that Macahilas's appendicitis was work-aggravated/related. The appendicitis may have been caused or aggravated by food provided onboard the vessel or the nature of his work. Finally, since Macahilas's final medical assessment was issued beyond the 240-day period, he was deemed entitled to permanent and total disability benefits amounting to US$60,000.00 in accordance with the POEA-SEC and not the CBA because his conditions did not arise from an accident as required under the CBA. He was, likewise, awarded attorney's fees amounting to US$6,000.00.[11]

BSM appealed the findings of the LA with the NLRC. In the Decision[12] dated February 29, 2016, the NLRC affirmed the ruling of the LA holding that Macahilas was entitled to payment of permanent and total disability benefits under the POEA-SEC and attorney's fees. [13]

BSM then filed a Petition for *Certiorari*[14] with the CA. In the Decision[15] dated August 31, 2017, the CA reversed and set aside the Decision of the NLRC. The CA held that appendicitis is not one of the occupational diseases listed under Section 32-A of the POEA-SEC. While there is a disputable presumption that an illness acquired on board is work-related, the seafarer must still show a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated. The CA held that Macahilas failed to prove this connection. The assessment of his physician, issued after a one-time consultation, did not provide an explanation how Macahilas's work caused or aggravated his appendicitis. Other than the allegations of stressful work conditions and unhealthy diet on board the vesssel, there was no credible medical evidence to support that his appendicitis was work-related.[16]

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11 Id. at 73.
12 Id. at 206-216.
13 Id. at 215.
14 Id. at 160-204.
15 Id. at 13-26.
16 Id. at 76-81.

Anent the issuance of the medical certificate[17] in March 2015, the same was issued for Macahilas's hernia. While Section 32-A of the POEA-SEC lists hernia as an occupational disease, the same must be proven to be immediately preceded by undue, or severe strain arising out of and in the course of employment, among other conditions.[18] The CA held that Macahilas's hernia did not arise out of or in the course of his employment because his incisional hernia was generated during the appendectomy. The CA held that Macahilas's conditions of hernia and appendicitis were not work related. In fact, after repatriation, his appendicitis was immediately assessed not to be work related for which he was declared fit to work on March 12, 2014, well-within the 120-day period.[19]

Unsatisfied with the CA ruling, Macahilas filed the instant petition with this Court. He reiterates that there is a causal connection between his work and illnesses, particularly, the diagnosis of appendicitis, fistula and hernia. Macahilas points out that appendicitis, although not a listed occupational illness under the POEA-SEC, enjoys a disputable presumption of work-relatedness. To establish the probable work-connection of the illness, he described his strenuous working conditions and diet on board the vessel and his tasks as third engineer which he claims caused said illness or at least aggravated a pre-existing condition. In the same vein, Macahilas's other illness of hernia, which is a listed occupational illness under the POEA-SEC, was also caused or aggravated by his work environment. Macahilas stresses that he was asymptomatic before boarding the vessel and was declared fit to work in his Pre-Employment Medical Examination (PEME). Having experienced symptoms onboard the vessel, it logically follows that his strenuous work on the vessel resulted in or aggravated his conditions. The company failed to dispute the work-relatedness of his appendicitis by simply relying on its physician's assessment stating that it was not work-related. BSM is also estopped from assailing the work-illness connection of his appendicitis and hernia because the company shouldered his medical costs. Moreover, Macahilas argues that he was unable to perform his customary work as third engineer for more than 120 or 240 days because he had been under treatment for at least 418 days. Despite the issuance of the

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17 Id. at 521.

18 Section 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:

x x x x

19. Hernia. All of the following conditions must be met:

a. The hernia should be of recent origin;

b. Its appearance was accompanied by pain, discoloration and evidence of the tearing of the tissues;

c. The disease was immediately preceded by undue or severe strain arising out of and in the course of employment, a protrusion of mass should appear in the area immediately following the alleged strain.

19 Id. at 76-81.

fit to work assessment, the fact remains that his condition is deemed permanent and total for his inability to resume his customary work for a period of 120 days. Finally, Macahilas argues that the CA erred in deleting the award of attorney's fees. Article 2208 of the Civil Code of the Philippines entitles him to payment of attorney's fees because he was compelled to litigate his interests.[20]

BSM, in its Comment,[21] argues that Macahilas's conditions are not work-related. First, he was repatriated for perforated appendicitis only, which was immediately assessed as not work-related by the company-designated physicians. Appendicitis is not even a listed occupational illness under the POEA-SEC. BSM emphasizes that it is incumbent on Macahilas to prove by substantial evidence that his illness was caused or aggravated by his employment. His arguments are mere insinuations and cannot even be corroborated by the single and belated assessment of his personal physician. BSM further argues that the assessment of the company-designated physician is more credible because its doctors have a more extensive knowledge of Macahilas's medical conditions. The fact that the company undertook to continue Macahilas's medical treatment after repatriation does not mean that they admit that his illness is work-related. It is very clear that Macahilas's illness was assessed by the company-designated physician as not work-related and he was declared, later on, as fit-to-work. Finally, awarding permanent and total disability benefits is not based on the measure of time. Although Macahilas was unable to return to work within 120 days from repatriation or that a fit-to-work assessment was issued beyond 240 days, this cannot mean that Macahilas's disability is permanent and total. It is the assessment of the doctor that is the measure of the degree of disability suffered by the seafarer. Once the company-designated physician has recommended a disability impediment grading within the 240-day period, the same is considered conclusive. In this case, the company-designated physician issued a "not work-related" assessment within 120 or 240 days.[22]

Ruling of the Court

Section 20(A) of the POEA-SEC provides two elements that must concur for an illness to be compensable: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. From the facts, Macahilas manifested symptoms on board the vessel and was repatriated for perforated appendicitis. Hence, it becomes relevant to determine if this illness is work-related.

Section 32-A of the POEA-SEC provides a list of occupational illnesses with conditions to be observed for compensability. Illnesses not listed therein are disputably presumed work-related.[23] Appendicitis is not a

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20 Id. at 43-52.
21 Id. at 101-131.
22 Id. at 117-129.
23 Section 20(A)(4) of the POEA-SEC.

listed illness under the POEA-SEC but enjoys the presumption that it is work-related. However, a reasonable connection between the nature of work on board the vessel and the illness contracted or aggravated must still be shown in order for the illness to be compensable.[24]

On record, Macahilas was diagnosed by the physician on board the vessel to be suffering from acute appendicitis.[25] It is a severe and sudden case of appendicitis[26] or the inflammation of the appendix.[27] The symptoms tend to develop quickly over the course of one to two days.[28] This illness can be diagnosed when a person already manifests the symptoms and is further physically examined, particularly, in the abdomen area,[29] or conducting of blood tests, urine test or imaging test of the abdomen.[30] As the onset of acute appendicitis can be unexpected, it is likely that Macahilas did not have said illness or was undetected when he was redeployed. In fact, he was declared fit to work in his PEME. It was only four months into his employment contract or on December 29, 2013 that he manifested symptoms of acute appendicitis, particularly, stomach pain, chills and nausea.[31] Considering that Macahilas manifested symptoms while working on board the vessel, logically, his illness was contracted or aggravated on board the vessel.

In an attempt to show that Macahilas's illness is not work-related, BSM emphasizes the company-designated physicians' medical opinion that the probable cause of Macahilas's illness is "due to the blockage of the appendix, usually a fecalith, causing inflammation."[32] There was no explanation how the blockage by a fecalith or stool could not have developed due to Macahilas's work. Macahilas, on the other hand, explained that blockage by a fecalith could have been due to the limited food options on board the vessel, such as frozen and processed meat, canned goods, and other preservative foods that are not easily digested.[33] He also explained that his duties as third engineer exposed him to hazardous chemicals, smoke emissions, combustion in the engine room, which could have weakened his immune system and increased his susceptibility to infectious virus or bacteria.[34] John Hopkins Medicine states that various infections such as virus, bacteria, or parasites in the digestive tract could lead to the inflammation of the appendix.[35] Clearly, there is risk of contracting the

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24 *Romana v. Magsaysay Maritime Corporation*, 816 Phil. 194 (2017).

25 *Rollo*, p. 500.

26 Acute appendicitis, <https://www.healthline.com/health/appendicitis#acute>, citing Acute Appendicitis, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1562475/> (visited June 22, 2020) .

27 Appendicitis. Overview, <https://www.mayoclinic.org/diseases-conditions/appendicitis/symptoms-causes/syc-20369543> (visited June 19, 2020).

28 Supra note 25.

29 Acute Appendicitis, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1562475/>, (visited June 22, 2020).

30 Diagnosis, <https://www.mayoclinic.org/diseases-conditions/appendicitis/diagnosis-treatment/drc-20369549>, (visited June 19, 2020).

31 What are the symptoms of appendicitis?, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/appendicitis> (visited June 19, 2020).

32 *Rollo*, p. 574.

33 Id. at 813.

34 Id.

35 What causes appendicitis? <https://www.hopkinsmedicine.org/health/conditions-and-diseases/appendicitis> (visited June 19, 2020).

illness by Macahilas's working condition.

Aside from the disputable presumption of work-relatedness of appendicitis, Macahilas was able to establish the causal connection between his work and his illness. We have held that "it is enough that the work has contributed, even in a small degree, to the development of the disease[illness] since strict proof of causation is not required. Only reasonable proof of work-connection and not direct causal relation is required to establish compensability."[36] The explanations of Macahilas, coupled with his undisputed claims on limited food options on board the vessel and that his work was strenuous and entailed exposure to hazardous chemicals, reasonably establish the work-relatedness of his illness.

Anent the diagnosis for fistula and hernia, We find the same to be work-related. The CT-scan results of Macahilas's abdomen area showed that said conditions were located at the surgical/incisional site.[37] Fistula is defined as "an abnormal connection between two body parts, such as an organ or blood vessel and another structure. Fistulas are usually the result of an injury or surgery." [38] Incisional hernia, on the other hand, "occurs at or in close proximity to a surgical incision through which intestine, organ or other tissue protrudes. Incisional hernias result from a weakening of the abdominal muscle due to a surgical incision." [39] Thus, the subsequent conditions of Macahilas clearly resulted from the surgery for appendicitis in a hospital in Mexico, where he was brought by his employer.

As to how much benefits should be paid to Macahilas, We find BSM liable for US$60,000.00 representing permanent and total disability benefits for failure of the company-designated physician to issue a final and definitive assessment within the 120/240-day mandated period.[40] A final, conclusive and definite assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment.[41] It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.[42]. In view of the foregoing, We cannot consider as valid and final an assessment merely stating that the illness of a seafarer is not work-related. Even with said assessment, the company-designated physician is bound to timely issue a fit to work assessment or disability grading. Here, the fitness

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36 *De Leon v. Maunlad Trans, Inc. Seacrest Associates*, 805 Phil. 531, 541 (2017); *DOHLE-PIDLMAN Manning Agency,Inc. v. Heirs Gazzingan*, 760 Phil. 861 (2015).

37 Id. at 513-514.

38 Definition taken from <https://medlineplus.gov/ency/article/002365.htm> (visited September 10, 2019).

39 Definition taken from <https://www.hopkinsmedicine.org/health/conditions-and-diseases/hernias/incisional-hernia> (visited September 10, 2019).

40 LABOR CODE OF THE PHILIPPINES, Article 192(2) [renumbered Article 198(b)]; Implementing Rules and Regulations of the Labor Code of the Philippines, Rule X, Section 2; *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil 363 (2015).

41 *Jebsens Maritime, Inc., v. Mirasol*, G.R. No. 213874, June 19, 2019.

42 Id.

assessment was issued 419 days after Macahilas's repatriation. Facts also show that Macahilas's illness was assessed as not work-related on the same day of his medical repatriation on January 17, 2014. Records[43] show that Macahilas must still undergo further examination of his condition. He was even under the care of the company-designated physician thereafter and was subjected to a second surgical operation for hernia in view of the infection from his first surgery in Mexico. Clearly, the not-work-related assessment issued by BSM's physicians is arbitrary.

We are not unmindful that the extent of a seafarer's disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his or her wages.[44] Indeed, the disability benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days.[45] However, it is equally important that the company-designated physician make a final and definitive determination of the fitness of a seafarer for sea duty **subject to the periods prescribed by law**.[46] The Court emphasizes that a timely, 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.[47] Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[48] We find it necessary to repeat and emphasize the following rules governing a claim for total and permanent disability benefits by a seafarer:

> 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;
> 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.**[49]

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43 *Rollo*, p. 573.
44 *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil 341, 358-359 (2015).
45 Id. at 363.
46 Id.
47 *Orient Hope Agencies, Inc., v. Jara*, G.R. No. 204307, June 6, 2018.
48 Id.
49 Id.

From the foregoing guidelines, We find that there is failure on the part of BSM to observe the mandatory period for issuance of a definitive assessment. Macahilas's medical condition is deemed total and permanent.

Finally, We likewise order payment of attorney's fees amounting to 10% of the monetary award in accordance with Article 2208(2)[50] of the Civil Code of the Philippines, since petitioner was compelled to litigate to satisfy his claim for disability benefits.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 31, 2017 of the Court of Appeals in CA-G.R. SP No. 146261 is **REVERSED** and **SET ASIDE**. Respondents BSM Service Centre Phils., Inc., et al. are **ORDERED** to jointly and solidarily pay petitioner Adex R. Macahilas permanent and total disability benefits amounting to US$60,000.00 and attorney's fees amounting to US$6,000.00.

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

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50 Art. 2208. In the absence of stipulation. Attorney's fees and expenses of litigation other than judicial costs, cannot be recovered except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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.

MARVIC MARIO VICTOR F. LEONEN
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.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
JAN 13 2021