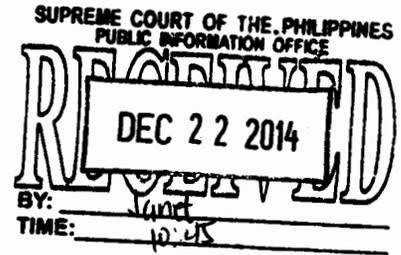




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **November 19, 2014** which reads as follows:*

**“G.R. No. 192710 – ANTONIO DEMIAR, *Petitioner* v. MAGSAYSAY MARITIME CORPORATION AND/OR KEYMAX MARITIME COMPANY LIMITED, *Respondents*.**

This is a Petition for Review on *Certiorari*<sup>1</sup> filed pursuant to Rule 45 of the Revised Rules of Court, assailing the 19 February 2010 Decision<sup>2</sup> rendered by the Special Fifteenth Division of the Court of Appeals in CA-G.R. SP No. 110613. In its assailed decision, the appellate court affirmed the Decision dated 20 February 2009 and the Resolution dated 20 June 2009 of the National Labor Relations Commission (NLRC) ordering the dismissal of the complaint for disability benefits filed by petitioner Antonio Demiar.

In a Resolution<sup>3</sup> dated 22 June 2010, the appellate court refused to reconsider its earlier decision.

***The Facts***

Respondent Keymax Maritime Company Limited (Keymax) is a foreign juridical entity engaged in the shipping business. It is represented in the Philippines by its manning agent, and co-respondent herein, Magsaysay Maritime Corporation (Magsaysay), a domestic corporation duly licensed to engage in the recruitment and placement of seafarers for employment.

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342

<sup>1</sup> *Rollo*, pp. 10-34.

<sup>2</sup> Penned by Associate Justice Marlene Gozales-Sison with Associate Justices Fernanda Lampas-Peralta and Michael P. Elbinias, concurring. *Id.* at 35-46.

<sup>3</sup> *Id.* at 47-48.

Petitioner Antonio Demiar was a seafarer registered under Philippine Overseas Employment Agency (POEA) and also with Maritime Industry Authority.

On 28 August 2006, petitioner was hired by respondent Keymax thru its manning agent, respondent Magsaysay, as a Bosun. His employment was to run for a period of nine months to commence on an even date and he was to receive, *inter alia*, a basic monthly salary of US\$566.00 a month.

Prior to the execution of the contract, petitioner underwent a thorough Pre-Employment Medical Examination and after compliance therewith, he was certified as "fit to work" by the company designated physician. It was noted in his medical examination records, however, that petitioner's hearing acuity was outside the acceptable limits on the right ear and was diagnosed with moderately severe sloping and moderate to severe hearing loss on his left ear.

To facilitate the continued performance of his regular duties while on board the vessel, petitioner used hearing aids on both ears. While the vessel Sea Hope was at sea, petitioner broke the hearing aid on his left ear which he immediately brought to the attention of the medical officer on board but he was afforded no relief. When their vessel was in Kachibada, Japan, petitioner once again approached the medical officer on board and asked that his hearing problems be treated at the nearest port, but he was told to wait until his arrival in the Philippines.

Upon petitioner's arrival in Manila on 25 May 2007, he immediately sought medical attention from the company but the same fell into deaf ears. Six months after his repatriation, petitioner's condition worsened resulting in the total loss of his hearing capacity and because respondents failed to provide him medical assistance, petitioner was constrained to initiate an action for the recovery of disability benefits before the Labor Arbiter. In his Position Paper, petitioner argued that he is suffering from total and permanent disability because hearing loss rendered him wholly and permanently incapable of work at a gainful occupation commensurate to his skills and training.

In refuting the claims of petitioner that he is entitled to disability benefits, respondents averred that they were not aware of petitioner's medical condition because he failed to report to the company within three days from repatriation for post-medical examination. The post-employment medical examination is important because it provides a basis to determine if the seafarer's illness that gave rise to disability or to his

demise was contracted during the term of his employment contract, and one's failure to undergo the same resulted in the forfeiture of his right to recover disability benefits.

After the parties submitted their respective position papers, the Labor Arbiter proceeded to render a Decision on 30 May 2008 in favor of petitioner, and thereby directing respondents to indemnify him in the amount of US\$7,465.00, to wit:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to pay [petitioner] the amount of US\$7,465.00, or its equivalent in Philippine Peso at the time of payment, as disability benefits.<sup>4</sup>

On appeal, the NLRC reversed the ruling of the Labor Arbiter and held in its Decision<sup>5</sup> dated 20 February 2009 that absent any determination either from the company designated physician or from an independent physician that petitioner is suffering from a work-related or work-aggravated disability, any claim for disability benefits is barred.

Ascribing grave abuse of discretion, petitioner elevated the adverse NLRC ruling to the Court of Appeals and insisted that his exposure to strenuous physical activities while on board the vessel caused the breakage of his hearing aid and the lack of medical attention from the respondents, after he made several pleas, resulted in the loss of his hearing capacity rendering him incapable to engage himself in any meaningful activity that would earn him compensation commensurate to his skills and training.

On 19 February 2010, the Court of Appeals rendered a Decision<sup>6</sup> affirming the ruling of the NLRC that petitioner is not entitled to disability benefits. The appellate court ruled that petitioner failed to establish that his hearing loss was contracted in the course of his employment and that his working conditions contributed thereto. He likewise failed to adduce evidence that he was exposed to the noisy machines while on board the vessel that caused the aggravation of his condition. The Court of Appeals concluded that in the absence of any showing that there is causal connection between the seafarer's working condition and his alleged injury or incapacity, the Court cannot make a declaration that his condition is work-related or work-aggravated.

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342

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<sup>4</sup> Id. at 37.

<sup>5</sup> Id. at 38.

<sup>6</sup> Id. at 35-46.

Similarly ill-fated was petitioner's Motion for Reconsideration which was denied by the appellate court in a Resolution<sup>7</sup> dated 22 June 2010.

### *The Issues*

Unyielding, petitioner is now before this Court *via* this instant Petition for Review on *Certiorari*<sup>8</sup> assailing the Court of Appeals' Decision and Resolution. For the resolution of the Court is the sole issue of whether the Court of Appeals committed serious, reversible error of law when it denied the petitioner of his rightful claim to disability compensation.<sup>9</sup>

### *The Court's Ruling*

#### **The Court resolves to deny the petition.**

Entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-Standard Employment Contract [SEC], as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement (CBA) bind the seaman and his employer to each other.<sup>10</sup>

Section 20 (B), paragraph 3 of the 2000 POEA-SEC<sup>11</sup> reads:

Section 20-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:

x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or

<sup>7</sup> Id. at 47-48.

<sup>8</sup> Id. at 10-34.

<sup>9</sup> Id. at 11-12.

<sup>10</sup> *Magsaysay Maritime Corporation v. NLRC*, G.R. No. 186180, 22 March 2010, 616 SCRA 362, 372-373.

<sup>11</sup> Department Order No. 4, s. of 2000 is entitled Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels.

disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (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. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.<sup>12</sup>

The 2000 POEA-SEC defines "work-related injury" as "injury(ies) resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."

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;
4. There was no notorious negligence on the part of the seafarer.<sup>13</sup>

There is no question that petitioner's hearing impairment was existing at the onset of his employment contract as evidenced by his medical records. Despite of his hearing condition, petitioner was allowed by respondents to board the vessel and perform his regular functions as a bosun with the use of hearing aids. The ultimate question that needs to be addressed in the case at bar is whether or not petitioner's hearing loss was aggravated by his work condition on board the vessel and is thus compensable under the circumstances.

After a careful perusal of the records, we have found no compelling reasons to deviate from the factual findings of the NLRC, as affirmed by the Court of Appeals, that petitioner's condition is not work-aggravated. Hence, he is not entitled to claim permanent disability benefits. As aptly

<sup>12</sup> *Magsaysay Maritime Corporation v. NLRC*, supra note 10 at 373-374.

<sup>13</sup> *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, 23 July 2009, 593 SCRA 668, 695.

pointed out by the appellate court, there is no proof on record that petitioner was exposed to the noisy engine of the vessel in the course of his employment that could have exacerbated his hearing impairment. Neither was it alleged that his job as a bosun required him to work at close proximity with the vessel's engine emitting noise that could cause the decrease of his auditory acuity. In other words, there is no substantiation that the progression of his condition was brought about largely by the condition of his job. At best, his allegations are just conjectures and do not suffice to discharge the required quantum of proof. In the absence of substantial evidence, working conditions cannot be accepted to have caused the risk of contracting the disease.<sup>14</sup> Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work causation or work-aggravation imposed by law is real and not merely apparent.<sup>15</sup>

What further tramples upon petitioner's cause of action was his failure to report to the company-designated doctor for post-employment medical examination in accordance with paragraph 3 of Section 20 (B) of the POEA-SEC. In *Musnit v. Sea Star Shipping Corporation*,<sup>16</sup> the Court held that failure to comply with this post-employment requirement which is a *sine qua non* bars the filing of claim for disability benefits, viz:

All told, the rule is that under Section 20-B(3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company designated physician within three days from his repatriation. The unexplained omission of their requirement will bar the filing of a claim for disability benefits.<sup>17</sup> (Underscoring theirs).

Not only did petitioner herein fail to submit himself for post-employment medical examination, he did not undergo any form of medical examination at all after his disembarkation. In fact, records are stripped of medical documentation to substantiate petitioner's claim that: (1) he is suffering from reduced hearing acuity; (2) his hearing impairment was aggravated by his working condition; and (3) such condition rendered him wholly and permanently incapable of work at a gainful occupation. In short, no medical certificate or any medical findings or diagnosis was presented by the petitioner as evidence to substantiate his claim.

- over -

342

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<sup>14</sup> *Panganiban v. Tara Trading Shipmanagement, Inc.*, G.R. No. 187032, 18 October 2010, 633 SCRA 353, 365.

<sup>15</sup> *Id.* at 365-366.

<sup>16</sup> 622 Phil. 722 (2009).

<sup>17</sup> *Id.* at 780.

In fine, we hold that petitioner is not entitled to total disability benefits for his failure to establish by substantial evidence that he is entitled thereto. The Court of Appeals thus did not err in sustaining the NLRC when the latter reversed the Labor Arbiter's decision to grant permanent and total disability benefits to the petitioner despite insufficient evidence to justify the grant.

While it is true labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed fairly, reasonably and liberally in favor of Filipino Seamen in the pursuit of their employment on board ocean-going vessels, we should be mindful that justice is in every case for the deserving to be dispensed with in light of established facts, the applicable law and existing jurisprudence.<sup>18</sup>

**WHEREFORE**, premises considered, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals are hereby **AFFIRMED**.

**SO ORDERED.** BERSAMIN, J., on official travel; VELASCO, JR., J., designated acting member per S.O. No. 1870 dated November 4, 2014.

Very truly yours,

**EDGAR O. ARICHETA**

Division Clerk of Court

342

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<sup>18</sup> *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas*, 566 Phil. 579, 589-590 (2008).

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342

