

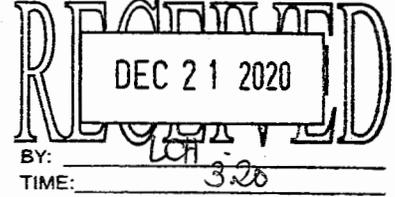


Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated July 8, 2020, which reads as follows:

“G.R. No. 209239 – (GALANT MARITIME CORPORATION AND MARLOW NAVIGATION CO., LTD., petitioners v. NESTOR D. LAUD, respondent). – This is a Petition for Review on certiorari with Prayer for Temporary Restraining Order and/or Preliminary Injunction¹ from the Decision² dated May 7, 2013 and Resolution³ dated September 18, 2013 (CA Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 117372 which reversed and set aside the Resolution dated July 9, 2010⁴ of the National Labor Relations Commission (NLRC) and granted respondent Nestor M. Laud (Laud) payment of total and permanent disability benefits.

The Antecedents

On June 15, 2005, Galant Maritime Corporation (GMC) hired Laud as Able Seaman on behalf of its principal, Marlow Navigation Co., Ltd. (MNCL; collectively petitioners), for a contract period of 10 months. Laud boarded the M/V Maersk Fortaleza on June 28, 2005 and performed his duties.⁵

On August 19, 2005, Laud met an accident while assisting in the loading and unloading of cargo at the Port of La Guaina, Venezuela. His body was pinned between two cargo containers after a mechanical malfunction and he suffered severe injuries to his arm, hand, and waist area.⁶

¹ *Rollo*, pp. 47-80.

² *Id.* at 16-26; penned by Associate Justice Manuel M. Barrios, with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro, concurring.

³ *Id.* at 11-14.

⁴ *Id.* at 103-109; penned by Commissioner Gerard C. Nograles, with Commissioner Perlita B. Velasco and Commissioner Romeo L. Go, concurring.

⁵ *Id.* at 17.

⁶ *Id.*

Laud underwent an operation at the local hospital and was afterwards repatriated to the Philippines on September 1, 2005 for further treatment. He was confined at St. Clare's Medical Center and was subjected to physiotherapy by the company-designated physicians. His rehabilitation continued for several months more after being discharged from the hospital.⁷

On December 15, 2005, while Laud was still undergoing therapy, he was asked by GMC to sign a release and quitclaim in exchange for a measly amount. Laud refused to sign it and was thus deprived of his sick wage allowance and appropriate disability benefits.⁸

On May 3, 2006, sensing that GMC was unjustly withholding his disability benefits, Laud filed a complaint with the NLRC Arbitration Branch against petitioners to collect his total permanent disability benefits, medical reimbursement, attorney's fees, and damages.⁹

On July 26, 2006, during the pendency of the NLRC arbitration proceedings, petitioners' designated clinic, NG & A Medical Clinic, issued an evaluation of Laud's disability classifying him as a Grade 10 Disability Assessment in accordance with the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC). Laud was declared "unfit for work considering that his left wrist joint was fractured and immobilized."¹⁰

Laud disagreed with this assessment and consulted his own independent physician, orthopedic surgeon Dr. Norberto Meriales (Dr. Meriales). On August 23, 2006, Dr. Meriales examined Laud and declared that he "suffered a debilitating injury on his left forearm and wrist affecting his dominant hand that made him unable to safely lift moderate loads and to climb a ladder with it or perform work requiring fine motor activities."¹¹

Petitioners offered to pay Laud US\$10,075.00 as Grade 10 Disability Benefits and US\$500.00 for his unclaimed sick wage allowance. Laud refused and made a counteroffer of US\$50,000.00 as total permanent disability benefits, which petitioners ignored.¹²

Labor Arbiter Ruling

⁷ Id. at 17-18.

⁸ Id. at 18.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 18-19.

¹² Id. at 18-19.

The Labor Arbiter (LA) in its Decision dated February 28, 2007 held that Laud was entitled to *total* and permanent disability benefits:

WHEREFORE, premises considered, judgment is rendered ordering the respondents to pay complainant his total and permanent disability benefit of US\$60,000.00, balance of his sickness allowance of US\$500.00 plus 10% thereof as attorney's fees.¹³

NLRC Ruling

Petitioners appealed the LA Decision to the NLRC. Their appeal was initially denied through the Resolution dated December 23, 2008.¹⁴

Petitioners filed a motion for reconsideration of the foregoing Resolution. The NLRC granted the motion and issued the now assailed Resolution¹⁵ dated July 9, 2010 reversing its previous resolution and the LA Decision, and ruling that Laud was entitled only to *partial* permanent disability benefits:

WHEREFORE, respondent's Motion for Reconsideration is GRANTED. The Decision dated December 23, 2008 is MODIFIED. Respondents are ordered to pay complainant, jointly and severally, the Philippine peso equivalent at the time of actual payment of the aggregate amount of US\$10,575.00 representing partial permanent disability benefits and balance of sickness wages, plus ten percent thereof as and for attorney's fees.¹⁶

Laud filed a motion for reconsideration of the NLRC Resolution but was denied.¹⁷

CA's Ruling

Laud filed a Petition for *Certiorari*¹⁸ dated December 10, 2010 with the CA assailing the NLRC Resolution. The CA granted the petition for *certiorari* and issued its Decision¹⁹ dated May 7, 2013 reversing the NLRC Resolution and once again declaring Laud entitled to *total* and permanent disability benefits:

¹³ Id. at 19.

¹⁴ Id.

¹⁵ Id. at 103-109.

¹⁶ Id. at 108.

¹⁷ Id. at 111-112.

¹⁸ Id. at 113-130.

¹⁹ Id. at 16-26.

WHEREFORE, the foregoing considered, the petition is GRANTED. The two (2) Resolutions dated 09 July 2010 and 23 September 2010, respectively of the NLRC are ANNULLED and SET ASIDE, and a new one is rendered ordering private respondents to jointly and severally pay petitioner permanent total disability benefits amounting to US \$60,000.00, balance of his sickness allowance worth US \$500.00 plus ten percent (10%) of the total monetary award as attorney's fees.

SO ORDERED.”

The CA denied petitioners' procedural arguments that Laud's petition for *certiorari* allegedly: (1) had a defective verification for failing to state competent proof of identity before the Notary Public; and that (2) Laud's counsel, Atty. Elaine Olaer, failed to properly specify her MCLE Compliance No. for the immediately preceding compliance period.²⁰

The CA opined that these defects were not fatal and did not warrant the outright dismissal of the petition for *certiorari*. It would be in the interest of equity and substantial justice to entertain the petition in light of the factual milieu and inherent merit of this case.²¹

It was held that Laud should be granted total and permanent disability benefits due to the fact that he was unable to resume his duties as an able seaman or be employed in the same line of work since the date of the accident which has been more than 120 days.²²

Petitioners filed a motion for reconsideration of the CA Decision but was denied through the CA Resolution.²³

Hence, the instant petition.

Issue

The sole issue in this case is whether or not Laud is entitled to *total* and permanent disability benefits.

The Court's Ruling

The Court resolves to deny the instant petition. The CA committed no reversible error in annulling the NLRC Resolution and granting Laud *total* and permanent disability benefits.

²⁰ Id. at 133-137.

²¹ Id. at 21.

²² Id. at 22-23.

²³ Id. at 11-14.

It is undisputed that Laud's injury is work-related and that he is entitled to disability compensation. The only remaining issue is his degree of disability and the amount of benefits he is legally entitled to.²⁴

Article 192 of the Labor Code defines a total and permanent disability as a "temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules." (Underscoring supplied)

Rule VII, Section 2(b) of the Amended Rules on Employee Compensation (AREC) similarly provides that "[a] disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X²⁵ of these Rules." (Underscoring supplied)

More specifically applicable to seafarers, Section 20(A) of the POEA-SEC provides the following guidelines for permanent total or partial disabilities:

(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 his Contract. x x x

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid. (Underscoring supplied)

In this regard, Section 32 of the POEA-SEC provides that only injuries and disabilities classified as Grade 1 may be considered total and permanent.

Reconciling the foregoing, the Court in *Kestrel Shipping Co., Inc. v. Munar*²⁶ elucidated that "the provisions of the Labor Code and AREC on disabilities are applicable to the case of seafarers such that the POEA-SEC is not the sole issuance that governs their rights in the event of work-related death, injury or illness."²⁷

²⁴ Id. at 21-22.

²⁵ The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. x x x

²⁶ 702 Phil. 717 (2013).

²⁷ Id. at 731. Citation omitted, underscoring supplied.

It was thus held in *Kestrel Shipping Co.* that due to the applicability of the Labor Code to seafarers, if partial and permanent disabilities incapacitate a seafarer from performing his usual sea duties for a period more than 120 or 240 days, depending on which is applicable, he shall, under legal contemplation, be considered totally and permanently disabled. Further, a company-designated physician is expected to arrive at a definite assessment of the seafarer's disability within the 120/240-day period, and the failure to do so shall deem the seafarer totally and permanently disabled:

Indeed, under Section 3229 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. **However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled.** In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. **Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.**

Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.²⁸
(Underscoring and emphasis supplied)

Moreover, the Court in *Sunit v. OSM Maritime Services, Inc. et al.*²⁹ defined Permanent Disability as "the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body."³⁰ Total Disability, in turn, was defined as "the disablement of an employee to earn wages in the same kind of 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 attainments could do."³¹

Notably, the Court in *Sunit* held that the seafarer was entitled to total and permanent disability benefits despite the physician's Grade 9 Partial Disability Assessment considering there was proof that the disability persisted

²⁸ Id. at 730-731.

²⁹ 806 Phil. 505 (2017).

³⁰ See also *Crystal Shipping, Inc. v. Natividad*, 510 Phil. 332, 340 (2005). Citations omitted.

³¹ Id.

beyond the 240-day period. It also provided the following useful guide to differentiate *total* and *partial* disabilities:

In determining whether a disability is total or partial, **what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the disability he met.** A permanent partial disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained, and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.³² (Underscoring and emphasis supplied)

In this case, the CA correctly concluded that both parties' evidence proved that Laud's disability and resulting failure to resume employment of any kind as a seafarer lasted well beyond the 120-day and 240-day period.

On July 25, 2006, 341 days after the date of the accident, the company-designated physician examined Laud and declared him "unfit for work considering that his left wrist joint was fractured and immobilized, and the same could not be brought back to its normal range of motion, despite months of physical therapy."³³ On August 23, 2006, 370 days after the date of the accident, Laud's independent physician examined him and found that he "suffered a debilitating injury on his left forearm and wrist affecting his dominant hand that made him unable to safely lift moderate loads and to climb a ladder with it or perform work requiring fine motor activities."³⁴

Hence, pursuant to established law and jurisprudence, Laud shall be legally considered totally and permanently disabled because his disabilities have incapacitated him from performing his usual duties as a seafarer for more than the mandated 120-day or 240-day period in certain cases.³⁵ The CA correctly noted that "it is now concededly impossible, improbable and unlikely for petitioner (Laud) to be hired again as a seafarer in any capacity or in any other job which involves strenuous physical activities considering that he can no longer even lift moderate loads nor climb a ladder using his left hand nor to perform other fine motor activities."³⁶

It also bears emphasis that petitioners' company-designated physician unjustifiably failed to issue a definitive assessment of Laud's disability within the mandated 120/240-day period as required by law. Laud's Grade 10 Disability Assessment was issued only 341 days after the accident and

³² *Sunit v. OSM Maritime Services, Inc., et al.*, supra note 29 at 521.

³³ *Rollo*, p. 18.

³⁴ *Id.* at 19.

³⁵ *Kestrel Shipping Co., Inc. v. Munar*, supra note 26; *Sunit v. OSM Maritime Services, Inc. et al.*, supra; *Crystal Shipping, Inc. v. Natividad*, supra note 30.

³⁶ *Rollo*, p. 23.

petitioners presented no sufficient evidence to justify the delay. Thus, on this additional ground, Laud shall be deemed totally and permanently disabled.³⁷

Consequently, the CA rightfully awarded Laud US\$60,000.00 as total and permanent disability benefits pursuant to the POEA-SEC, and the amount of US\$500.00 as the balance of his sickness allowance. The award of Attorney's Fees is likewise proper for respondent was compelled to litigate this case.³⁸

WHEREFORE, the petition is **DENIED**. The Decision dated May 7, 2013 and Resolution dated September 18, 2013 of the Court of Appeals in CA-G.R. SP No. 117372 are **AFFIRMED**.

All amounts awarded shall earn interest at the rate of six percent (6%) per annum from the time of finality of this Resolution until fully paid.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
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Division Clerk of Court JB 12/3/20

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/s/ey

³⁷ *Sealandia Crew Management Phils. Inc. v. Rañoa*, G.R. No. 226233, 9 July 2018.

³⁸ CIVIL CODE, Article 208; *Montierro v. Rickmers Marine Agency Phils. Inc.*, 750 Phil. 937, 948 (2015).