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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JEBSENS MARITIME, INC. AND/OR STAR CLIPPERS, LTD.,
Petitioners,

- versus -

EDGARDO M. MIRASOL,
Respondent.

G.R. No. 213874

Present:

CARPIO, *J.*, *Chairperson*,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

19 JUN 2019

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DECISION

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated May 12, 2014 and Resolution[3] dated August 14, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 133037. The CA Decision granted the petition for *certiorari* and annulled the Resolutions dated June 28, 2013[4] and September 30, 2013[5] of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. OFW (M) 11-16383-12; NLRC LAC No. (OFW-M) 03-000279-13, and awarded to respondent permanent and total disability benefits, sickness allowance, and attorney's fees.

Facts

The factual antecedents as found by the CA, are as follows:

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1 *Rollo*, pp. 3-33, excluding Annexes.
2 Id. at 35-51. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang.
3 Id. at 53-54.
4 Id. at 65-71. Penned by Commissioner Pablo C. Espiritu, Jr., with Presiding Commissioner Alex A. Lopez and Gregorio O. Bilog III concurring.
5 Id. at 72 to 72-A.

A Complaint dated 08 November 2012 was filed by complainant Edgardo Malate Mirasol against respondents Jebsens Maritime, Inc., Star Clippers Ltd., and/or Maria Theresa Lunzaga for total and permanent disability benefits, moral and exemplary damages, four months basic wages, and attorney's fees.

In his Position Paper dated 17 December 2012, complainant [(respondent herein)] alleged, *inter alia*, that: he is entitled to total permanent disability benefits of US$60,000.00 under the POEA Standard Employment Contract; his illness is work-related as it was sustained in the course of his duties; said illness was not pre-existing since he underwent the mandatory pre-employment medical examination before he was employed by the respondents, and was found to be fit and given a clean bill of health; the law does not require that a seafarer be totally paralyzed in order to claim total permanent disability benefits; he is entitled to moral and exemplary damages, and attorney's fees; respondents [(petitioners herein)] must be ordered to pay moral damages in the amount of Php500,000.00; in addition to his sickness/loss of right testicle, he also suffered serious anxiety, sleepless nights, wounded feelings and loss of appetite; respondents must likewise be ordered to pay him exemplary damages of Php500,000.00; and since it was respondents' act of refusing to pay his disability benefits which forced him to litigate, they must likewise be ordered to pay attorney's fees of ten percent (10%) of the total award in his favor.

Complainant also filed an Addendum Supplement dated 27 December 2012, wherein it was alleged that respondents are legally mandated to provide sickness allowance equivalent to 120 days salaries; and that their refusal to pay sickness allowance is a manifest sign of bad faith which makes them liable for damages.

Respondents filed their Position Paper dated 05 December 2012, and averred, *inter alia*, that: complainant is not entitled to disability compensation under the POEA Standard Employment Contract because his testicular cancer is not work-related; Section 32 of the POEA Standard Employment Contract states that epidydimitis and testicular cancer are not considered as occupational diseases; Section 32-A of the POEA Standard Employment Contract provides that for an occupational disease and the resulting disability or death to be compensable, four conditions must be satisfied; none of these conditions have been met; his work did not involve the risks inherent in acquiring epidydimitis and testicular cancer; none of his duties as a First Cook was a contributing factor in the development of epidydimitis which is an illness pertaining to the male reproductive organ in relation to sexual intercourse; testicular cancer is a disease in which cells become malignant in one or both testicles; he has the burden of proving the reasonable connection between his ailments and his working conditions; he was onboard the Royal Clipper for ten days before he started complaining of pain in his right testicle; it is medically impossible for him to have developed his epidydimitis and testicular cancer in such a short period of time; his epidydimitis, which became testicular cancer, is not work-related, and not compensable; and he is not entitled to sickness allowance and reimbursement of medical expenses, damages and attorney's fees.

Respondents filed their Reply dated 09 January 2013. Complainant also filed his Reply dated 15 January 2013 and Rejoinder of even date. Respondents then filed their Rejoinder dated 18 January 2013.[6]

Labor Arbiter (LA) Decision

The LA found that petitioners were liable to pay respondent permanent and total disability benefits and sickness allowance for 120 days, as well as attorney's fees. The dispositive portion of the LA Decision[7] dated January 31, 2013 states:

> **WHEREFORE**, Respondents **JEBSENS MARITIME, INC. and STAR CLIPPERS LTD.** are solidarily liable to pay the Complainant the amount of **SIXTY THOUSAND U.S. DOLLARS (US$60,000.00)** representing his total and permanent disability benefits, **TWO THOUSAND FIVE HUNDRED EIGHTY U.S. DOLLARS (US$2,580.00)** as his sickness allowance; and ten (10%) percent thereof, or **SIX THOUSAND TWO HUNDRED FIFTY EIGHT U.S. DOLLARS (US$6,258.00)** as and for attorney's fees, or their peso equivalent at the time of payment.
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> All other claims are dismissed for lack of merit.
>
> **SO ORDERED.**[8]

The LA found that respondent acquired epidydimitis and testicular cancer[9] while he was on-board the vessel because he was declared fit to work during his pre-employment medical examination.[10] The LA also found that respondent was subjected to enormous stress and constantly exposed to dusts, chemical irritants, and/or natural elements such as harsh sea weather.[11]

NLRC Resolution

On appeal, the NLRC partially granted the appeal. The dispositive portion of the NLRC Resolution[12] dated June 28, 2013 states:

> WHEREFORE, premises considered, the appeal is **PARTLY GRANTED** and the Decision dated 31 January 2013 is hereby **MODIFIED** ordering respondents-appellants who are solidarily held liable, to pay complainant-appellee disability compensation in the amount of US$7,465 corresponding to the Grade II Schedule of Disability under Section 32 of the POEA Standard Contract.

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6 Id. at 36-37.
7 Id. at 56-63. In NLRC-NCR Case No. OFW (M) 11-16383-12, penned by Labor Arbiter Rommel R. Veluz.
8 Id. at 63.
9 See id. at 59.
10 Id.
11 Id. at 60.
12 Id. at 65-71.

> The Labor Arbiter's award of sickness allowance and attorney's fees to complainant-appellee is **AFFIRMED**.
>
> SO ORDERED.[13]

The NLRC ruled that respondent's testicular cancer is not work-related because respondent complained of pain in his right testicle on his 10th day onboard the vessel and that cancer cannot happen in just 10 days.[14] Nonetheless, the NLRC ruled that given the fact that it was undisputed that respondent lost one testicle, which is considered an illness under Urinary and Generative Organs with a disability grade of 11, respondent is entitled to US$7,465.00.[15] Having failed to show proof of payment of sickness allowance to respondent, the NLRC affirmed the LA's award of sickness allowance to respondent.[16]

CA Decision

Aggrieved, respondent filed a petition for *certiorari* with the CA, which nullified the NLRC Resolutions and reinstated the LA Decision. The dispositive portion states:

> **WHEREFORE**, premises considered, the Petition is **GRANTED**. The Resolutions dated 28 June 2013 and 30 September 2013 of the National Labor Relations Commission (Third Division) in *NLRC NCR Case No. OFW (M) 11-16383-12; NLRC LAC No. (OFW-M) 03-000279-13* are **NULLIFIED**. The Decision dated 31 January 2013 of Labor Arbiter Rommel R. Veluz is **REINSTATED**. No pronouncement as to costs.
>
> **SO ORDERED.**[17]

The CA ruled that respondent is entitled to permanent and total disability benefits because the company-designated physicians failed to arrive at a timely and definite assessment of respondent's fitness to work or permanent disability.[18] The CA found that respondent was repatriated on August 4, 2012 and in a Medical Report dated August 29, 2012, the company-designated physicians diagnosed respondent with epidydimitis and solid mass in his right testicle and recommended for radical orchiectomy.[19] The CA found that respondent was admitted at the Manila Doctors Hospital on October 18, 2012, radical orchiectomy was performed on October 19, 2012, and he was discharged from the hospital on October 23, 2012. Thereafter, the company-designated physicians did not arrive at an assessment of respondent's fitness to work or permanent disability.[20] The CA therefore ruled

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13 Id. at 71.
14 Id. at 70.
15 Id.
16 Id.
17 Id. at 48.
18 Id. at 44.
19 Id.
20 Id.

that respondent is entitled to permanent and total disability benefits for the company-designated physicians' failure to declare a definite assessment of respondent's fitness to work or permanent disability during the 120 or 240-day periods.[21]

Further, the CA affirmed the award of sickness allowance and attorney's fees.[22]

Petitioner moved for reconsideration but the CA denied this. Hence, this Petition.

Issues

The Petition raises the following issues:

I. THE [CA] SERIOUSLY ERRED IN RULING THAT RESPONDENT IS ENTITLED TO PERMANENT TOTAL DISABILITY BENEFITS PURSUANT TO SECTION 32 OF THE POEA-SEC; AND

II. THE [CA] GRAVELY ERRED IN RULING THAT RESPONDENT IS ENTITLED TO ATTORNEY'S FEES.[23]

The Court's Ruling

The Petition is denied.

Respondent is entitled to permanent and total disability benefits and attorney's fees.

Petitioners argue that respondent's illness was not work-related as he only experienced his symptoms 10 days after joining the crew's vessel[24] and that he failed to present substantial evidence to prove that his illness was work-related.[25] This is baseless in light of the undisputed fact that the company-designated physicians failed to arrive at a final and definite assessment of respondent's fitness to work or the degree of his disability.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*[26] (*Elburg*), the Court summarized the rules when a seafarer claims total and permanent disability benefits, as follows:

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21 Id. at 44-45.
22 Id. at 46-47.
23 Id. at 10.
24 Id. at 13.
25 Id. at 14.
26 765 Phil. 341 (2015).

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.[27]

A final, conclusive, and definite medical 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. 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.

Here, petitioners admit that respondent was repatriated on August 4, 2012.[28] Further, they also admit that the last medical assessment issued by the company-designated physicians was on August 29, 2012,[29] which stated the following:

Date:	August 29, 2012
Attention:	**MS. EFFEL SANTILLAN** Employee Administration Manager
Patient:	**MIRASOL, EDGARDO M.**
Position:	1st COOK
Vessel:	ROYAL CLIPPER
Agent:	**JEBSENS MARITIME, INC.**
Principal:	STAR CLIPPERS LTD.
Date of Repatriation:	August 04, 2012 (Manila)
Status:	Treatment in Progress
Days on Treatment:	**23 Day(s)**

MEDICAL REPORT

Report:
5th MEDICAL REPORT

The patient was seen today in our clinic.

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27 Id. at 362-363.
28 *Rollo*, p. 6.
29 See id. at 7.

He was seen by our urologist. CT scan was reviewed and he opined that malignancy of the right testicle is highly entertained. He recommended radical orchiectomy (right).

He complains of pain and tenderness on his right testicle.

Diagnosis:
Epidydimitis, right
Solid mass – right testicle
To consider Malignancy

Recommendation:
Radical Orchiectomy
Estimate cost: Php 200,000.00 (actual cost may vary)

Next Appointment:
September 12, 2012

By: Noted:

(Signed) (Signed)
Regino, Amado G. Cruz, Nicomedes G., M.D.[30]

The foregoing shows that the 5th Medical Report does not reflect a definite and final assessment of respondent's fitness to work or disability rating, or whether his illness was work-related. The report was merely an interim report as it specifically stated a date for the next appointment. Further, it indicates that respondent's treatment was "in progress."

Following *Elburg*, the company-designated physicians' failure to issue a final and definite assessment within the 120-day period makes respondent entitled to permanent and total disability benefits. It was no longer necessary for respondent to present evidence that his illness is work-related and compensable because the law operates to declare respondent entitled to total and permanent disability benefits after the company-designated physicians' failure to issue a final and definite assessment within the 120-day period.[31]

As to the LA and the CA's award of ten percent (10%) attorney's fees, the Court affirms the same. The award of attorney's fees is proper as the Court ruled in *Cariño v. Maine Marine Phils., Inc.*[32] that attorney's fees may be recovered by an employee in actions for indemnity under the employer's liability laws.

WHEREFORE, premises considered, the Petition is **DENIED.** The Decision dated May 12, 2014 and Resolution dated August 14, 2014 of the Court of Appeals in CA-G.R. SP No. 133037 are **AFFIRMED**.

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30 Id. at 99.
31 *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018, pp. 8-9.
32 G.R. No. 231111, October 17, 2018, p. 15.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.

LUCAS P. BERSAMIN
Chief Justice