Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BW SHIPPING PHILIPPINES, INC., BW GAS ASA/NORWAY AND/OR ROLANDO C. ADORABLE, Petitioners,	**G.R. No. 202177**
- versus -	Present: PERLAS-BERNABE,* *S.A.J.,* HERNANDO,** *Acting Chairperson,* INTING, GAERLAN, and DIMAAMPAO, *JJ.*
MARIO H. ONG, Respondent.	Promulgated: NOV 17 2021

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DECISION

GAERLAN, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 112793 dated March 9, 2012, and its Resolution[2] dated June 4, 2012, denying the motion for reconsideration thereof. The assailed Decision affirmed the Resolutions dated October 27, 2009 and December 22, 2009 of the National Labor Relations Commission (NLRC).

The Antecedent Facts

Respondent Mario H. Ong (respondent) was first hired by petitioner BW Shipping Philippines, Inc. (petitioner) in January 1999. Since then, respondent was rehired and promoted by the petitioner several times in a span of nine (9) years.[3]

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* On official leave.

** Designated Acting Chairperson per Special Order No. 2855 dated November 10, 2021.

1 *Rollo*, pp. 13-18; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon M. Bato, Jr.

2 Id. at 20-22.

3 Records pp. 60, 65.

On March 19, 2008, respondent was employed by petitioner to work as Chief Steward and Chief Cook on board its vessel, BW Hemina, for a period of nine (9) months with a basic monthly salary of USD1,127.00. Prior to embarkation, respondent underwent the required physical and physiological evaluation by company-designated physicians, and was declared to be "fit for sea duty (without restriction)." Respondent boarded the vessel on March 29, 2008.[4]

Respondent's duties required him to manage and monitor the food supplies on board and to ensure that they would last for the duration of their voyage. He also supervised the meals of the crew members, carried supplies, and supervised the work of his subordinates. Respondent likewise prepared reports and requests for the vessel's provision, which are sent to port authorities and their principal company.[5]

On June 8, 2008, respondent complained of dizziness, nausea, recurring headache, body itchiness, frequent urination, and shortness of breath. On June 17, 2008, respondent was seen by a doctor in Tampa, Florida, and was diagnosed to be suffering from "uncontrolled diabetes and uncontrolled hypertension." With this, respondent was repatriated on June 20, 2008, and was referred to the company-designated physicians. Respondent underwent a series of tests and was thereafter advised to take medications.[6]

On October 2, 2008, the respondent was declared by company-designated physicians to be "fit to resume sea duties."[7]

However, insofar as the respondent felt, his condition did not improve. Thus, he sought the opinion of Dr. Antonio C. Pascual (Dr. Pascual), a cardiologist. In a Medical Certificate dated January 12, 2009, Dr. Pascual found the respondent to be suffering from "Essential Hypertension, Stage 2 and Diabetes Mellitus, Type 2," with no prior history of the same diseases.[8]

Respondent sought petitioner's assistance to defray the costs of his medications, but the latter refused. This prompted respondent to file a complaint for permanent disability benefits, payment of medical reimbursement, damages, and attorney's fees before the Labor Arbiter (LA).[9]

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4 Id.
5 Id. at 61.
6 Id. at 62-63, 65; *Rollo* p. 14.
7 Id. at 66.
8 Id. at 63.
9 Id. at 64, 69.

On June 19, 2009, LA Enrique L. Flores rendered his Decision[10] granting the complaint, *to wit*:

> WHEREFORE, the foregoing considered, judgment is hereby rendered in favor of the [respondent] and finding [petitioners] liable to pay jointly and severally [respondent's] permanent total disability benefits of USD90,000.00 in Philippine Currency at the prevailing rate at the time of payment, and attorney's fees of ten percent (10%) of the total monetary award.
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> All other claims are DENIED.
>
> SO ORDERED. [11]

In his Decision, the LA held that, to be compensable, the seafarer's illness need only to occur during the term of the contract. As respondent was not able to return to his customary work for more than 241 days from his repatriation, the LA concluded that he was entitled to permanent total disability benefits in the amount of USD90,000.00, pursuant to the Collective Bargaining Agreement.[12]

Petitioners appealed the Decision of the LA to the NLRC, which rendered its Decision[13] on October 27, 2009, dismissing the appeal and affirming the assailed Decision.

The NLRC held that contrary to the LA's disquisition, the compensability of a seafarer's illness depends not only on whether the same was contracted during the effectivity of the employment contract but also whether the same was work-connected.[14]

Nonetheless, the NLRC refused to set aside the LA's decision based solely on the latter's misapplication of the governing contract, after finding that the conditions for compensability have been met in this case.[15]

The petitioners sought reconsideration, but the same was denied by the NLRC in its Resolution[16] dated December 22, 2009.

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10 Id. at 59-75.
11 Id. at 75.
12 Id. at 69-75.
13 Id. at 50-57; penned by Commissioner Gregorio O. Bilog, III and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.
14 Id. at 53.
15 Id. at 53-56.
16 Id. at 77-78.

Petitioners then filed a petition for *certiorari* with the CA, alleging that the NLRC committed grave abuse of discretion in granting respondent's claim for disability benefits, sickness allowance, and attorney's fees.[17]

On March 9, 2012, the CA rendered the herein assailed Decision[18] which denied the petition for *certiorari,* as follows:

> WHEREFORE, premises considered, the petition is DENIED. The October 27, 2009 and December 22, 2009 Resolutions of the Public Respondent National Labor Relations Commission are AFFIRMED.
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> SO ORDERED.[19]

The CA opined that while the respondent had been declared fit to resume sea duty by the company-designated physician, the same did not affect the respondent's entitlement to permanent total disability benefits in view of proof that respondent was unable to work since his repatriation on June 20, 2008; and that the respondent remained under medication even after he was declared fit to work. Lastly, the CA found that the respondent was able to prove that the illnesses are work-related.[20]

Petitioners sought reconsideration of the decision but the CA denied it in its Resolution[21] dated June 4, 2012.

Thus, this petition for review on *certiorari*[22] whereby petitioners, in sum, attribute error upon the CA in affirming the labor tribunals' finding that respondent is entitled to permanent total disability benefits.

The petition is **meritorious**.

In appeals before the Court of labor cases, review is limited in determining the legal correctness of the assailed CA decision within the same context that it resolved the petition for *certiorari* presented to it. Simply, the Court only determines whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision brought before it, as opposed to whether the decision on the merits of the case was correct.[23]

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17 Id. at 13, 15.
18 Id. at 13-18.
19 Id. at 17.
20 Id. at 15-17.
21 Id. at 20-22.
22 Id. at 25-56.
23 *Montoya v. Transmed Manila Corp./Mr. Ellena, et al.*, 613 Phil. 696, 706-707 (2009).

In labor disputes, grave abuse of discretion is attendant when the tribunal's findings and conclusions are not supported by substantial evidence.[24] Herein, the Court finds that there is no basis to grant permanent and total disability benefits with respect to the respondent's *diabetes mellitus* and hypertension.

The entitlement of an overseas seafarer to disability benefits is a matter governed not only by medical findings but also by law and contract – the employment contract and the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) – which are deemed incorporated therein.[25]

To be entitled to compensation, respondent must prove the existence of two (2) conditions set forth under Section 20(B), paragraph 6 of the 2000 POEA-SEC, namely: *first,* the injury or illness must be work-related; and *second,* it must have existed during the term of the seafarer's employment contract.[26]

Diabetes mellitus is not an occupational disease under Section 32-A of the POEA-SEC. By its nature, diabetes is a complex medical condition typified by gradations. Thus, the mere fact that the respondent is suffering from the illness does not *ipso facto* warrant the award of permanent total disability benefits. The severity and work connection must be adequately proven.[27] As stated by the Court in *Rillera v. United Philippine Lines, Inc.*,[28] *diabetes mellitus* is ordinarily acquired through inheritance and is remotely caused by environmental and occupational conditions.[29] "*Diabetes mellitus* is a metabolic and a familial disease to which one is pre-disposed by reason of heredity, obesity or old age. It does not indicate work-relatedness and, by its nature, is more the result of poor lifestyle choices and health habits for which disability benefits are improper."[30]

Essential hypertension, on the other hand, is a recognized occupational disease under Section 32A of the POEA SEC. Nonetheless, apart from being work-related, the POEA-SEC requires an element of gravity, that is, hypertension must be of such nature as indicative of impairment of the function of body organs such as the kidneys, heart, eyes, and brain; thus resulting in permanent disability.[31] Evidence to this end, "must be real and substantial, and

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24 *Ayungo v. Beamko Shipmanagement Corp.*, 728 Phil. 244, 252 (2014).
25 *Jebsens Maritime, Inc. and/or Alliance Maritime Services, Ltd. v. Undag*, 678 Phil. 938, 946 (2011).
26 *Ayungo v. Beamko Shipmanagement Corp.*, supra note 24 at 253.
27 *C.F. Sharp Crew Management, Inc. v. Santos*, 838 Phil. 82, 100 (2018).
28 G.R. No. 235336, June 23, 2020, citing *GSIS v. Valenciano*, 521 Phil. 253, 260 (2006).
29 Id.
30 *C.F. Sharp Crew Management, Inc. v. Santos*, supra note 27 at 99.
31 Id. at 98-99.

not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent."[32]

Notably, respondent's allegations failed to demonstrate how his work responsibilities lead to his acquisition of diabetes and hypertension, correlating his duties with the latter's characteristics as an illness. As well, respondent failed to substantiate that his hypertension is of such nature as to render him permanently and totally disabled to perform his work as a seafarer.

Herein, after his repatriation on June 20, 2008, respondent was immediately attended to by company-designated physicians. For months, respondent underwent a series of checkups, tests, and was provided the necessary medication and treatment. These medical procedures were recorded and documentary proof had been presented in this case and undisputed by the respondent. On October 2, 2008, or 104 days from respondent's repatriation, the company-designated physician issued a certification stating that he is fit to resume sea duties.[33] Interestingly, the respondent did not immediately contest the finding; instead, it took him more than three (3) months to consult his physician.

Respondent's doctor of choice who issued a medical certificate on January 12, 2009, found him to be afflicted with "Essential Hypertension, Stage 2 and *diabetes mellitus*, type 2, with no prior history of these illnesses."[34] Seemingly, the said physician merely stated a conclusion without adequate factual or medical support to his findings. The records are unclear as to the extent in which the respondent was examined by his doctor before arriving at the conclusion that he was medically unfit to work as a seaman. Surely, the same do not compare with the medical attention given to respondent by the company-designated physicians, particularly considering that their diagnoses are supported by respondent's laboratory tests which all yielded normal results.[35] Clearly, under these circumstances, the diagnosis of the company-designated physicians should be given greater weight and credit by the Court.

Significantly, under Section 32-A of the POEA-SEC, a seafarer can still be employed although afflicted with hypertension and/or diabetes as long as it is controlled by compliance with prescribed maintenance medications and lifestyle changes.[36] Indeed, such has been the case when the company-designated physicians initially validated that respondent was in fact suffering from the subject illnesses; but after treatment and medication, he was found "fit to work." There is therefore no merit in the contention that the act of the

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32 *Jebsens Maritime, Inc. and/or Alliance Maritime Services, Ltd. v. Undag*, supra note 25.
33 Records, pp. 62-63, 65-66.
34 Id. at 51, 63.
35 CA *rollo*, p. 66.
36 *C.F. Sharp Crew Management, Inc. v. Santos*, supra note 27 at 98.

company-designated physician in prescribing that respondent continue taking his anti-hypertensive medications belie the finding that the latter was already fit to work.[37]

In the same way, the Court cannot subscribe to the respondent's argument that since he was unable to work as a seafarer for more than 120 days from the time of his repatriation, his disability should be considered as permanent and total.[38]

The extent of a seafarer's disability is judged not by the number of days that he could not work, but by the disability grading given by the doctor on the basis of the resulting incapacity to work and earn wages. In recognition of the physician's knowledge and expertise on this field, the Court gives great significance upon the timely medical evaluation in determining the seafarer's entitlement to disability benefits.[39]

Ultimately, the petition must fail as respondent did not comply with his obligation under Section 20(A)(3) POEA-SEC. The provision sets forth the mechanism to challenge the validity of the assessment of the company-designated physician. Under which, it is the duty of the respondent, after disclosing to the company the conflicting assessment of his doctor, to signify his intention to resolve the disagreement by referral to a third doctor jointly agreed upon by the parties, whose decision on the matter shall be final. In here, respondent did not signify his intention to resolve the conflict but instead filed the instant complaint before the LA. On account of respondent's failure to comply with the proper conflict-resolution procedure under POEA-SEC, the diagnosis of the company-designated physician must be upheld.[40]

The medical findings on record, evaluated on their intrinsic merits in relation to the requirements of pertinent law and contract, the Court finds, for the reasons already mentioned, that respondent is not entitled to permanent total disability benefits.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on *certiorari* is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 112793 dated March 9, 2012, and its Resolution dated June 4, 2012, are hereby **REVERSED and SET ASIDE**. Accordingly, respondent Mario H. Ong's complaint is **DISMISSED**.

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37 *Rollo*, p. 115.
38 Id. at 123-126.
39 *C.F. Sharp Crew Management, Inc. v. Santos*, supra note 27 at 99.
40 *Ayungo v. Beamko Shipmanagement Corp., et al.*, supra note 24 at 253.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

(On official leave)
ESTELA M. PERLAS-BERNABE
Senior Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
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.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ALEXANDER G. GESMUNDO
Chief Justice